PART VI

MERGING SHELL DOCUMENTS, PENALTY CALCULATIONS

AND OTHER INFORMATION FOR ENFORCEMENT

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MERGE INSTRUCTION

A majority of the enforcement documents are prepared using shell documents and variable files. The shell documents are on write protect which means you can not alter them without taking it off write protect. You should use the shell documents from the H:\ENFORCE\DIVSOP directory for orders, letters and memos; and shell documents from the H:\ENFORCE\NEWSHELL directory for technical requirements every time you merge a document in case changes have been made to the shells.

For the purposes of discussion in this section (Part VI) of the Enforcement Guidelines, the term Administrative Order (AO) means any agreed order developed using either the 1660 or Findings style orders.

For Orders:

1. Retrieve the SHELL document from the DIVSOP directory. Under Ordering Provisions, Technical Requirements, insert the technical requirements (TRs) which you want as part of the Order from the NEW SHELL directory. Do this for each TR you require and then number each TR.
2. Save this shell in your personal directory and then exit the document.
3. Retrieve the VARIABLE document from the DIVSOP directory. Complete this variable file with the information requested. The information requested must be placed after the comment box, but prior to the {END FIELD}. The {END FIELD} must be the last item for that field to merge properly and be on the same line (i.e. for permittee name, City of

Houston{END FIELD}). If you delete the {END FIELD}, it can be replaced by hitting F9. Save the variable file in your personal directory using the .frm extension for the file and then exit the document.

4. DOS VERSION

   Merge the shell and variable file you have created together. To do this for DOS use the CTRL F9 key then Hit 1 for merge.

5. WINDOWS VERSION

   Go to TOOLS then MERGE. When asked for the Primary File type in the name of the shell document (i.e.; H:\ENFORCE\LEAH\ ORDER\ 1049502.she). Enter. When asked for the Secondary File type in the name of the variable document (i.e.; H:\ENFORCE\ LEAH\ORDER\1049502.var). Enter. The document will then come up merged and ready for editing. The rectangles you see on the merged document are comments which were used to help you complete the variable file. They will not show when you print your document, but can be confusing. To "hide" these comments in DOS SHIFT F1, 2, 6, 2, n. To "hide" these comments in WINDOWS go to VIEW and make sure COMMENTS is not checked. Now it will be easier to edit the merged document. Save the merged order into your personal directory.

For Other Enforcement Documents:

The same procedure is used at that outlined above. The completed variable file, saved to your personal directory, can be merged directly into the appropriate SHELL document from the DIVSOP directory without saving the SHELL document in your own person directory.

WATER QUALITY STANDARD TECHNICAL REQUIREMENTS

H:\ENFORCE\NEWSHELL\.....

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AGRICULTURE

TRAG1 (No Permit)

Within 60 days from the issuance date of the Order, FIELD(1) shall submit an administratively complete wastewater permit application (or waste management plan, if applicable) to the TNRCC Permitting Section of the Water Quality Division and comply with any deadlines for requests for additional information from the Permitting and Enforcement Section.

TRAG2 (Certification of Compliance)

Within __ days from the issuance date of the Order, FIELD(1) shall submit a plan and schedule prepared by a Texas registered professional engineer or a Soil Conservation Service engineer to achieve compliance with the permit requirements. Upon TNRCC review, possible modification and approval, the plan shall be implemented immediately in accordance with the approved schedule.

TRAG3 (Notification of Completion)

Within 30 days of completion of the required work to achieve compliance, the FIELD(1) shall submit certification by a Texas registered professional engineer or a Soil Conservation Service engineer that the work has been completed and that the facilities have been constructed in accordance with the approved plan.

TRAG4 (Irrigation Plan)

Within __ days of the issuance of the Order, FIELD(1) shall submit to the TNRCC Permitting Section, Water Quality Division a written irrigation plan which details the operation of the irrigation system and the steps that will be taken to eliminate discharges into the receiving water and ponding of wastewater on the irrigation field. A copy of the plan shall be submitted to Region FIELD(4) Office. Upon TNRCC approval, the plan and schedule shall be implemented immediately.

WASTEWATER

TRWW1 (Certification with Optional Compliance Plan and Schedule)

Within (give deadline or time frame for certification such as "within 30 days of effective date of the order" or "within 30 days of the completion of the proposed improvements pursuant to TR #X above", use shortest time period as possible) from the effective date of the Order, FIELD(Short Name) shall certify compliance with ____ limits of TNRCC Permit No. FIELD(Permit #).

* The second paragraph may be also be used if the permittee has not already indicated they have a plan to address the noncompliances and you feel the TR below would be appropriate. Use the shortest compliance period as possible.

Within thirty (30) days of the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule for achieving compliance with the _____ limits of TNRCC Permit No. FIELD(Permit #). The plan shall include interim milestone dates with a deadline date of (give specific date or give time frame such as within three to six months of the effective date of the order) for completion. A copy of the plan and schedule shall be provided to FIELD(Short Name), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

TRWW2 (Solids Management Plan)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall develop a solids management plan (SMP). The SMP shall outline a program of internal process control testing to monitor the efficiency of the wastewater treatment plant and to maintain the proper solids balance within the system. The SMP shall be prepared by a Texas registered professional engineer or an "A" TNRCC Certified Wastewater Operator.

Within ninety (90) days from the effective date of the Order, the engineer or "A" operator shall review the SMP in the field with the FIELD(Short Name)'s wastewater treatment plant operator(s). Immediately following the field review, FIELD(Short Name) shall implement the SMP. Information regarding items recommended for inclusion in an SMP and recommended references are available in the Enforcement Division handout titled “Solids Management Plan Information”.

A copy of the SMP and written verification of completion of the SMP field review shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(City) Regional Office. Organized, written records of the process control tests results shall be maintained by FIELD(Short Name) for a period of three years at the plant site in a daily log book and/or checklist and shall be made available to TNRCC representatives upon request.

TRWW3 (Inflow/Infiltration Problems)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule for mitigating the effects of Inflow/Infiltration (I/I). The plan shall be prepared by a Texas registered professional engineer and the plan shall include an evaluation phase to determine the effectiveness of completed I/I corrective actions. FIELD(Short Name) shall provide a copy of the plan to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

TRWW4 (Implement a Pretreatment Program)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall develop a plan and schedule to implement an industrial pretreatment program within one year (or give specific date) of the effective date of the Order. FIELD(Short Name) shall provide a copy of the plan and implementation schedule to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office. The plan shall be prepared by a Texas registered professional engineer and, at a minimum, include the following information:

a. a chemical analysis characterizing the waste stream discharged by each industrial user;

b. effluent quality limits for industrial users to ensure the wastewater treatment facility is not overloaded or adversely impacted;

c. a system to monitor industrial users to ensure compliance with established limits; and

d. a mechanism to provide authority (Sewer Use Ordinance) to impose pretreatment requirements on industrial users and provide a sufficient range of enforcement options.

TRWW5 (Engineering Assessment of Treatment Capabilities)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall prepare an engineering assessment of the treatment capabilities of the existing wastewater treatment facility. A copy of the assessment shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(City) Regional Office. The assessment shall be prepared by a Texas registered professional engineer and shall include, at a minimum, the following:

a. hydraulic and organic design capacity, and current and projected loading of the facility;

b. the ability of the plant to remove pollutants to the levels identified in the permit;

c. available alternatives to reduce and control waste loads entering the collection system; and

d. recommendations resulting from the above assessment, which includes improvements and/or expansion, listed in a plan and schedule for implementation by Permittee nameFIELD(Short Name) to attain compliance with the _____ limit of TNRCC Permit No. FIELD(Permit #) by (give specific deadline date or time frame such as one year from the effective date of the order). The schedule shall include dates for securing a permit amendment and approval of plans and specifications, if applicable.

TRWW6 (Uncertified Operator)

Immediately upon the effective date of the Order, FIELD(Short Name)shall continuously employ a wastewater treatment plant operator, or operations company, that is certified by the TNRCC at the required level as stated in 30 TEX. ADMIN. CODE Chapter 325 to operate the referenced facility.

TRWW7 (Deteriorating Plant Conditions)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall conduct an analysis of the physical condition of each component of the existing wastewater treatment facility. The analysis shall be prepared by a Texas registered professional engineer and shall include, at a minimum, the following:

a. an evaluation of the facility's structural integrity;

b. a plan to remediate any safety hazards at the facility; and

c. recommendations listed in a plan and schedule for implementation with a final completion date of (give specific date or time frame such as one year from effective date of order) for replacing or refurbishing inoperable or deteriorated components.

A copy of the analysis and implementation schedule for any proposed improvements shall be provided to FIELD(Enf. Coord. (EC)), Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office

TRWW8 (No Permit)

Within sixty (60) days from the effective date the Order, FIELD(Short Name) shall submit an administratively complete wastewater permit application to the TNRCC Wastewater Permits Section of the Water Quality Division and comply with any deadlines for requests for additional information from the Permits Section.

TRWW9 (Deteriorating Lift Stations)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule for replacing or refurbishing inoperable or deteriorated components of the existing lift station by (give specific date or time frame such as 90 to 120 days from the effective date or order) in order to prevent any unauthorized discharge of untreated wastewater. The plan shall be prepared by a Texas registered professional engineer and a copy of the plan shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

TRWW10 (Stream Remediation)

Within thirty (30) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule for the remediation of the receiving stream and adjacent affected properties. Remediation shall be completed by (give specific date or time frame such as within 30 days of effective date of order). A copy of the plan and implementation schedule shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

Disposal of sludge shall be carried out in accordance with all applicable rules of the TNRCC and in a manner that prevents contamination of surface or groundwater. FIELD(Short Name) shall maintain written records of the amount of sludge removed, the technique used, and the ultimate disposal site. A copy of these records shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office within thirty (30) days following the completion of the project and disposal of the sludge deposits.

In the event that access to the adjacent affected properties is denied for whatever reason(s), then the remediation on these properties will be excluded from the above requirements provided that FIELD(Short Name) can submit information to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division substantiating that it made every reasonable attempt to obtain the property owner's permission to enter their property.

TRWW11 (Ground Water Assessment Plan - Industrial)

Within ninety (90) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a Ground Water Quality Assessment Plan and Schedule. The plan and schedule shall be prepared by a qualified hydrogeologist to identify if the ground water has been contaminated from FIELD(Short Name)'s facility. The plan and schedule shall provide, at a minimum, the following:

a. The number, location, and depth of the ground water monitoring wells, including

wells to determine background concentrations;

b. A sampling plan and schedule which, at a minimum, specifies in detail the following:

   i. Well evacuation procedures including the volume to be evacuated prior to sampling and the method used in handling purged well water;

   ii. Sample withdrawal techniques and equipment, sample frequency, sample preservation, chain of custody, and the analytical methods;

   iii. Sample protocol including field measurement for pH, conductivity, and temperature for each sample; and

   iv. Each sample shall be analyzed for EPA priority pollutants, Total Dissolved Solids (TDS), Chemical Oxygen Demand (COD), Total Organic Carbon (TOC), Sulfate, and Chloride.

c. Monitor wells to determine constituent concentration and to delineate the vertical and horizontal extent of constituents within the uppermost aquifer as well as any other hydraulically connected aquifer that has the potential to be contaminated;

d. Identification of collection site for background ground water quality and a characterization of background levels;

e. A sufficient description of aquifer interaction and the migration patterns within each contaminated aquifer;

f. Sufficient information for TNRCC hydrogeologist to duplicate the results of the evaluation, including any ground water or contamination models; and

g. Provision to provide notification to the TNRCC FIELD(City) Regional Office at least seven (7) working days prior to initiation of the plan and an additional seven (7) working days notification prior to sampling of the installed wells.

Within sixty (60) days of completion of the Ground Water Quality Assessment, provide recommendations for corrective action resulting from the above assessment and a schedule for implementation by FIELD(Short Name). The corrective action shall be implemented in accordance with the hydrogeologist's recommended schedule. A copy of the Ground Water Quality Assessment and recommendations for corrective action shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(City) Regional Office.

TRWW12 (Water Conservation/Retrofit)

Within one hundred eighty (180) days of the effective date of the Order, FIELD(Short Name) shall develop and implement a water conservation and retrofit program in accordance with 30 TAC Chapter 288 designed to reduce rates of wastewater flow to the WWTP, TNRCC Permit No. FIELD(Permit #).

FIELD(Short Name) shall provide a copy of the water conservation and retrofit program, and verification the program was implemented (such as a copy of a City Water Conservation Ordinance) to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(City) Regional Office.

TRWW13 (Notice of Penalty - Billing)

Upon the occasion of the second regular billing of the FIELD(Short Name) wastewater treatment plant customers after the effective date of the Order, but in any event not more than sixty (60) days after the effective date of the order, there shall be included with each bill, notification to the effect that the Texas Natural Resource Conservation Commission has imposed an administrative penalty in the amount of FIELD($ Number) on FIELD(Short Name) for water pollution due to operation and maintenance deficiencies and violations of TNRCC Permit No. FIELD(Permit #), and has been required to abide by the Commission Order requiring proper operation and maintenance of the plant, protection of human health and water quality, and compliance with permit and State requirements. Within thirty (30) days of the notification appearing on the bill, FIELD(Short Name) shall submit a copy of the notice to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TN RCCFIELD(Reg. City) Regional Office.

TRWW14 (Notice of Penalty in Paper)

Within sixty (60) days of the effective date of the Order, FIELD(Short Name) shall publish in a newspaper available in general circulation in the locale of the permitted facility a notification to the effect that the Texas Natural Resource Conservation Commission has imposed an administrative penalty on FIELD(Short Name) for water pollution due to violations of the TEX. WATER CODE and TNRCC Permit No. FIELD(Permit #). The public notice shall include a statement that FIELD(Short Name) has agreed to pay administrative penalties in the amount of FIELD($ Number) and has been required to abide by the Commission Order requiring protection of human health and water quality, and compliance with permit and State requirements. Within thirty (30) days of the publication of the notice, FIELD(Short Name) shall submit a copy of the public notice to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

TRWW15 (Schedule of New or Expanded Plant)

Within ninety (90) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule prepared by a Texas registered professional engineer for the construction of a new wastewater treatment facility or an expansion of the existing facility with a

final completion date of (give specific date or time frame such as within 2 years of the effective date of the order). Prior to commencement of construction, FIELD(Short Name) is required to amend their TNRCC permit to reflect the increased treatment capacity, if necessary, and secure approval of the plans and specifications from the TNRCC Wastewater Permits Section in the Water Quality Division. FIELD(Short Name) shall provide a copy of the plan and schedule to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

TRWW16 (Standard Operating Procedures)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall develop written Standard Operating Procedures (SOP) for the operation and routine scheduled and preventative maintenance of all components of the wastewater treatment facilities. The SOP shall be prepared by a Texas registered professional engineer.

Within ninety (90) days of the effective date of the order, the engineer shall review the SOP in the field with FIELD(Short Name)'s wastewater treatment facility's operator(s). Immediately following the review, FIELD(Short Name) shall implement the SOP. Information regarding items recommended for inclusion in an SOP and recommended references are available in the Enforcement Division handout titled "Standard Operating Procedures Manual Information".

A copy of the SOP and written verification of completion of the review shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office. A daily log book documenting operations and maintenance activities shall be maintained for a period of three (3) years and shall be made available to TNRCC representatives upon request.

TRWW17 (Flow Equalization)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule with a final completion date of (give specific date or time frame such as within one year of the effective date of the order) for constructing a flow equalization basin. The plans and specifications for the project shall be prepared by a Texas registered professional engineer and be in compliance with 30 TEX. ADMIN. CODE Chapter 317. In addition to the requirements of 30 TEX. ADMIN. CODE Chapter 317, the basin shall be designed to prevent algae growth, premature biological stabilization, and nuisance odor conditions. A copy of the plan and schedule shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

TRWW18 (Tie-in Feasibility Analysis)

Within one hundred twenty (120) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule to investigate the feasibility of tie-in to (name of other facility if applicable) wastewater treatment system or any other publicly owned treatment works, and a cost estimate for tie-in, as well as justification for any rejection for tie-in by FIELD(

Short Name). A copy of the plan shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office. The plan shall include, at a minimum, the following:

a. Within thirty (30) days from the issuance of an Order, request a statement from the treatment facility owner approving or denying the acceptance of the wastes from FIELD(Short Name)'s system; and

b. If approval for connection to an alternate facility is obtained, complete the following:

i. a cost estimate for the construction of the collection line(s) and other facilities necessary to tie in FIELD(Short Name)'s wastewater flows to the treatment facility;

ii. estimated monthly costs transferred to the customers in FIELD(Short Name)'s service area for the tie-in;

iii. schedule for completing tie-in; and

iv. a closure plan for the existing treatment facility.

The feasibility plan and cost estimates, as well as justification for any rejection of tie-in by FIELD(Short Name), shall be prepared by a Texas registered professional engineer. Failure to pursue tie-in to an alternate facility by FIELD(Short Name) must be justified by either: 1) a statement from the other entity denying the tie-in, 2) financial analysis demonstrating that the tie-in is not cost effective, or 3) other documentation deemed suitable by the engineer.

If the tie-in is determined to be feasible by the engineer, then FIELD(Short Name) shall complete the tie-in within one year of the effective date of the Order. If the tie-in is deemed unfeasible by the engineer, then FIELD(Short Name) shall submit a plan and schedule to ensure that FIELD(Short Name) shall review the possibility of a tie-in on a periodic basis. Notwithstanding the conditions of this provision of the Order, FIELD(Short Name) shall comply with the (parameter in violation) limit of TNRCC Permit No. FIELD(Permit #).

TRWW19 (Spill Prevention and Control Plan)

Within sixty (60) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a spill prevention and control plan. This plan shall include procedures to be taken to prevent spills of any products or wastes used in, or resulting from, the industrial process or associated maintenance and cleaning activities at this facility. In addition, this plan shall include procedures to be taken in the event that spills or discharges do occur. These procedures shall include, at a minimum, the identification and removal of spilled material, and any contaminated soils. A copy of the spill prevention and control plan shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

Additional information regarding items recommended for inclusion in a spill prevention and control plan are available in the Enforcement Division handout titled "Spill Prevention and Control Plan Information".

All spills and the implemented remediation procedures shall be orally reported to the TNRCC FIELD(Reg. City) Regional Office within twenty four (24) hours of becoming aware of the occurrence, and in writing within five (5) days to both the TNRCC FIELD(Reg. City) Regional Office and Manager, Water Section, TNRCC Enforcement Division.

TRANSPORTERS

TRTR1 (Cease Transportation)

Immediately upon the effective date of the Order, FIELD(Short Name) shall cease transporting waste until such time as a registration is issued from the TNRCC.

TRTR2 (Notify of Intent to Continue Transporting)

Within fifteen (15) days from the effective date of the Order FIELD(Short Name) shall notify FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and the TNRCC FIELD(Reg. City) Regional Office in writing of FIELD(Short Name)'s intent to continue transporting waste. If FIELD(Short Name)'s intent is to continue transporting waste, a registration application shall be submitted to the TNRCC Sludge and Transporter Review Team, Water Quality Division within thirty (30) days from the effective date of the Order.

TRTR3 (Stream Remediation)

Within thirty (30) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule for the remediation of the receiving stream and adjacent affected properties. Remediation shall be completed by (give specific date or time frame such as within 30 days of effective date of order). A copy of the plan and implementation schedule shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

Disposal of sludge shall be carried out in accordance with all applicable rules of the TNRCC and in a manner that prevents contamination of surface or groundwater. FIELD(Short Name) shall maintain written records of the amount of sludge removed, the technique used, and the ultimate disposal site. A copy of these records shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office within thirty (30) days following the completion of the project and disposal of the sludge deposits.

In the event that access to the adjacent affected properties is denied for whatever reason(s), then the remediation on these properties will be excluded from the above requirements provided that FIELD(

Short Name) can submit information to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division substantiating that it made every reasonable attempt to obtain the property owner's permission to enter their property.

TRTR4 (Spill Prevention and Control Plan)

Within sixty (60) days from the effective date of an Order, FIELD(Short Name) shall develop and implement a spill prevention and control plan. This plan shall include procedures to be taken to prevent spills of any wastes resulting from the transport of waste. In addition, this plan shall include procedures to be taken in the event that spills or discharges do occur. These procedures shall include, at a minimum, the identification and removal of spilled material, and any contaminated soils. A copy of the spill prevention and control plan shall be provided to FIELD(Enf. Coord. (EC)) , TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City)Regional Office.

All spills and the implemented remediation procedures shall be orally reported to the TNRCC FIELD(Reg. City) Regional Office within twenty-four (24) hours of the occurrence, and in writing within five (5) days to both the TNRCC FIELD(Reg. City) Regional Office and Manager, Water Section, TNRCC Enforcement Division.

TRTR5 (Comply with Transporter Rules)

Upon registration, FIELD(Short Name) shall operate in compliance with TNRCC rules, transporter registration terms and conditions and applicable State requirements for the transport and disposal of sewage sludge/ domestic septage, grit and grease trap waste, and water treatment plant sludge.

TRTR6 (Submit Trip Tickets)

FIELD(Short Name) shall submit trip ticket copies for all waste transported on a quarterly basis with as outlined:

Quarterly Report Period	Report Due Date
January - March	April 20
April - June	July 20
July - September	October 20
October - December	January 20

to the TNRCC Sludge and Review Team, Water Quality Division and to the TNRCC FIELD(Reg. City) Regional Office.

BENEFICIAL USE SITES

TRBFU1 (Cease Disposing of Sludge)

Immediately upon the effective date of the Order, FIELD(Short Name) shall cease land application of sewage sludge at the site located FIELD(Fac. Location) in FIELD(County) County, Texas until such time as a registration or permit is issued from the TNRCC.

TRBFU2 (Notify of Intent to Continue Disposing of Sludge)

Within fifteen (15) days from the effective date of the Order FIELD(Short Name) shall notify FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and the TNRCC FIELD(City) Regional Office in writing of FIELD(Short Name) intent to continue disposing of sewage sludge. If FIELD(Short Name) intent is to continue disposing of sewage sludge, a registration application shall be submitted to the TNRCC Sludge and Transporter Review Team, Water Quality Division within thirty (30) days from the issuance date of the Order.

TRBFU3 (Stream Remediation)

Within thirty (30) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a plan and schedule for the remediation of the receiving stream and adjacent affected properties. Remediation shall be completed by (give specific date or time frame such as within 30 days of effective date of order). A copy of the plan and implementation schedule shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office.

Disposal of sludge shall be carried out in accordance with all applicable rules of the TNRCC and in a manner that prevents contamination of surface or groundwater. FIELD(Short Name) shall maintain written records of the amount of sludge removed, the technique used, and the ultimate disposal site. A copy of these records shall be provided to FIELD(Enf. Coord. (EC)) , TNRCC Enforcement Division and to the TNRCC FIELD(Reg. City) Regional Office within thirty (30) days following the completion of the project and disposal of the sludge deposits.

In the event that access to the adjacent affected properties is denied for whatever reason(s), then the remediation on these properties will be excluded from the above requirements provided that FIELD(Short Name) can submit information to FIELD(Enf. Coord. (EC)) , TNRCC Enforcement Division substantiating that it made every reasonable attempt to obtain the property owner's permission to enter their property.

TRBFU4 (Groundwater Assessment and Remediation)

Within ninety (90) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a Ground Water Quality Assessment Plan and Schedule. The plan and schedule shall be prepared by a qualified hydrogeologist to identify if the ground water has been contaminated from FIELD(Short Name)'s facility. The plan and schedule shall provide, at a minimum, the following:

a. The number, location, and depth of the ground water monitoring wells, including wells to determine background concentrations;

b. A sampling plan and schedule which, at a minimum, specifies in detail the following:

i. Well evacuation procedures including the volume to be evacuated prior to sampling and the method used in handling purged well water;

ii. Sample withdrawal techniques and equipment, sample frequency, sample preservation, chain of custody, and the analytical methods;

iii. Sample protocol including field measurement for pH, conductivity, and temperature for each sample; and

iv. Each sample shall be analyzed for EPA priority pollutants, Total Dissolved Solids (TDS), Chemical Oxygen Demand (COD), Total Organic Carbon (TOC), Sulfate, Nitrates and Chloride.

c. Monitor wells to determine constituent concentration and to delineate the vertical and horizontal extent of constituents within the uppermost aquifer as well as any other hydraulically connected aquifer that has the potential to be contaminated;

d. Identification of collection site for background ground water quality and a characterization of background levels;

e. A sufficient description of aquifer interaction and the migration patterns within each contaminated aquifer;

f. Sufficient information for TNRCC hydrogeologist to duplicate the results of the evaluation, including any ground water or contamination models; and

g. Provision to provide notification to the TNRCC FIELD(City) Regional Office at least seven (7) working days prior to initiation of the plan and an additional seven (7) working days notification prior to sampling of the installed wells.

Within sixty (60) days of completion of the Ground Water Quality Assessment, provide recommendations for corrective action resulting from the above assessment and a schedule for implementation by FIELD(Short Name). The corrective action shall be implemented in accordance with the hydrogeologist's recommended schedule. A copy of the Ground Water Quality Assessment and resulting plan and schedule of correction actions shall be provided to FIELD(Enf. Coord. (EC)), TNRCC Enforcement Division and to the TNRCC FIELD(City) Regional Office.

TRBFU5 (Runoff Prevention Plan)

Within forty five (45) days from the effective date of the Order, FIELD(Short Name) shall develop and implement a runoff prevention plan and schedule prepared by a Texas registered professional engineer which shows how compliance with 30 Texas Administrative Code Section 312.44 (h) (1)-(9) shall be obtained by (give specific deadline date or time frame such as within 6 months of the effective date of the order). A copy of the plan and schedule shall be provided to Enf. Coord.

Texas Natural Resource Conservation Commission Penalty Policy
Final
Effective October 1, 1997

Introduction

This document describes the policy of the Texas Natural Resource Conservation Commission (TNRCC) regarding the computation and assessment of administrative penalties. Enforcement actions may result from serious or unresolved violations discovered during an inspection or during a review of the record of information submitted to the agency, or from information that concerns violations and is gained from meetings related to permits. This document does not address when an enforcement action is initiated, but rather how TNRCC staff are to evaluate violations for the purpose of recommending administrative penalties to the commission.

This policy includes a description of how violations are evaluated in terms of harm and severity and how any proposed penalties are determined. It includes a discussion of what adjustments may be made to the base penalty amount after the review of case-specific information. Two appendices contain examples of various categories of violations; a third appendix contains a list of certain violations that are common and the base penalty associated with each respective violation as derived from the penalty matrices in the policy.

Penalties sought through the Office of the Attorney General (OAG) in court actions will be based upon this policy; however, the statutory maximums for civil action will be used accordingly. Cases originally developed as administrative cases that are referred to the OAG will remain under the administrative penalty evaluation unless new information warrants use of the civil penalty maximum.

Statutory Authorizations

The Commission has the authority to assess administrative penalties under a number of statutes located in the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). These statutes include: TWC Chapters 7, 11, 12, 13, and 16; and THSC Chapter 341. These statutes provide the Commission with the authority to assess penalties and set forth the factors that the Commission must consider in determining the amount of penalty to assess (see chart below).

Program	Statute/ Chapter	Administrative penalties, per violation per day	Civil penalties, per violation per day
Air Quality	TWC/7	$0-10,000	$50-25,000
Industrial and Hazardous Waste	TWC/7	$0-10,000	$50-25,000
Land over MSW Landfills	TWC/7	$0-10,000	$50-25,000
Medical Waste	TWC/7	$0-10,000	$50-25,000
Municipal Solid Waste	TWC/7	$0-10,000	$50-25,000
Petroleum Storage Tank	TWC/7	$0-10,000	$50-25,000
Radioactive Substances	TWC/7	$0-10,000	$50-25,000
Subsurface Excavation	TWC/7	$0-10,000	$50-25,000
Toxic Chemical Release Reporting	TWC/7	$0-10,000	$50-25,000
Underground Injection Control	TWC/7	$0-10,000	$50-25,000
Underground Water	TWC/7	$0-10,000	$50-25,000
Waste Tires	TWC/7	$0-10,000	$50-25,000
Water Quality	TWC/7	$0-10,000	$50-25,000
On-Site Sewage Disposal	TWC/7	$0-2,500	$50-5,000
On-Site Sewage Installation	TWC/7	$0-2,500	$50-5,000
Used Oil	TWC/7	$0-2,500	$50-5,000
Water Saving Performance Standards	TWC/7	$0-2,500	$50-5,000
Irrigators	TWC/7	$0-2,500	$50-5,000
Weather Modification	TWC/7	$0-2,500	$50-5,000
Water Rights	TWC/11	$0-5,000	$0-5,000
Dam Safety	TWC/12	N/A	$0-5,000
Public Water Utilities	TWC/13	0-$500	$100-5,000
Levees	TWC/16	$0-1,000	$0-1,000
Public Water Supply	TH&SC/341	$50-1,000	$50-1,000

Computing the Base Penalty Amount

Violations will be broken into two types: those that harm or have the potential to harm the environment and/or human health and those that are related to documentation. Because of this differentiation, the TNRCC will have two separate penalty matrices—the Environmental/Property and Human Health Penalty Matrix and the Programmatic Penalty Matrix.

In the Environmental/Property and Human Health Penalty Matrix, the base penalty amount for violations is developed by first examining two factors: release and harm (damage). *Release* means the emission or discharge of pollutants into the environment or a public drinking water system; the unauthorized diversion, taking or storage of state water; or the unauthorized change of a flood elevation of a stream. A violation will be evaluated to determine whether there has been a release and will be categorized as either an actual release or a potential release. *Actual* is defined as "existing in fact or reality; not merely potential." *Potential* is defined as "existing in possibility; capable of development into actuality." Appendix 1 contains program-specific examples of actual violations and potential violations.

The second factor to assess is the degree of harm (damage) that has affected or could have affected human health, property associated with a water right or construction of a levee and/or environmental receptors. These two factors are incorporated into a penalty matrix from which the base penalty is determined.

The commission will also evaluate the appropriate penalty based upon the size of the violator. Where the U.S. EPA has designated "major" facilities from "minor" facilities, the agency will utilize that distinction. The definitions used for each program area are described below. Individuals and operators are considered minor facilities. Anything not explicitly covered in this section will be determined on a case by case basis.

<u>Air</u>

Major Source:

1) Any stationary facility which is a source of non-hazardous air pollutants which directly emits, or has the potential to emit, 100 tons per year or more of any air pollutant except in some non-attainment areas. In serious ozone non-attainment counties the threshold is 50 tons per year for volatile organic compounds (VOC) and nitrogen oxides (NOx). In severe ozone non-attainment counties the threshold is 25 tons per year for VOC and NOx.

2) For the hazardous air pollutants listed in the Federal Clean Air Act, a source that emits or has the potential to emit 10 tons per year or more of a single pollutant or 25 tons per year or more of any combination of pollutants.

Minor Source: Defined as any non-major source.

<u>Water Quality (including Concentrated Animal Feeding Operations)</u>:

Major: Municipal facilities with a daily average flow greater than 1 million gallons per day are considered major facilities. Industrial facilities are classified as major or minor facilities using a point scale used by EPA Region 6. The TNRCC Permitting Section of the Water Quality Division uses EPA Region 6's classification schedule to determine if a facility is defined as major or minor. All Water Quality permittees are designated as major or minor.

Minor: Municipal facilities with a daily average flow less than 1 million gallons per day. Industrial facilities are classified upon permitting as major or minor as described above.

Public Water Supply

Major: A retail public utility serving more than 1100 total connections.

Minor: A retail public utility serving 1100 or fewer total connections. In addition, non-retail public water supply entities will be classified as minor unless specific circumstances exist which would cause them to be classified as majors.

Industrial and Hazardous Waste

Major: A generator of more than 12,000 kg of hazardous waste on an annual basis. Commercial industrial facilities are majors.

Minor: A generator of 12,000 kg or less of hazardous waste on an annual basis.

Municipal Solid Waste

Major: A municipal solid waste landfill accepting more than 20 tons of municipal solid waste disposed of daily, based on an annual average.

Minor: A municipal solid waste landfill accepting less than 20 tons of municipal solid waste disposed of daily, based on an annual average.

PST

Major: A UST facility that has a monthly throughput of more than 50,000 gallons.

Minor: A UST facility that has a monthly throughput of less than 50,000 gallons.

Radioactive Waste

All facilities will be considered majors.

Underground Injection Control

All facilities will be considered majors.

Water Rights

Major: A water right of greater than 5000 acre-feet.

Minor: A water right of less than or equal to 5000 acre-feet.

Levees

Major: Levee or other improvement constructed in the 100 year floodway designed for flood protection for a 100 year flood or greater.

Minor: Levee or other improvement constructed in the 100 year floodway designed for flood protection for less than a 100 year flood.

ENVIRONMENTAL/PROPERTY AND HUMAN HEALTH PENALTY MATRIX

	Major Harm	**Moderate Harm**	**Minor Harm**
	Major / Minor Entities	Major / Minor Entities	Major / Minor Entities
Actual release	100% / 50%*	50% / 25%	25% / 10%
Potential release	50% / 25%	25% / 10%	10% / 5%

* Percentage of maximum penalty allowed by the applicable statute

Harm is categorized as major, moderate, or minor. Definitions for each category of harm are provided below. Specific examples of each category of harm are provided in Appendix 2.

CATEGORIES OF HARM

	Actual Release	**Potential Release**
Major Harm	Human health or the environment has been exposed to pollutants which **exceed** levels that are protective of human health or environmental receptors as a result of the violation. Unauthorized diversion, taking, or storage of state water or an unauthorized change in flood elevation of a stream which deprives others of water, severely affects aquatic life, or results in a safety hazard, property damage or economic loss.	Human health or the environment will or could be exposed to pollutants which **would exceed** levels that are protective of human health or environmental receptors as a result of the violation. Potential for unauthorized diversion, taking, or storage of state water or an unauthorized change in flood elevation of a stream which would deprive others of water, severely affect aquatic life or result in a safety hazard, property damage or economic loss.

Moderate Harm	Human health or the environment has been exposed to **significant** amounts of pollutants which **do not exceed** levels that are protective of human health or environmental receptors as a result of the violation. Unauthorized diversion, taking, or storage of a significant amount of state water or a significant unauthorized change in flood elevation of a stream which does not detrimentally affect aquatic life or result in a safety hazard, property damage or economic loss.	Human health or the environment will or could be exposed to **significant** amounts of pollutants which **would not exceed** levels that are protective of human health or environmental receptors as a result of the violation. Potential for unauthorized diversion, taking, or storage of a significant amount of state water or a significant unauthorized change in flood elevation of a stream which would not detrimentally affect aquatic life or result in a safety hazard, property damage or economic loss.
Minor Harm	Human health or the environment has been exposed to **insignificant** amounts of pollutants which **do not exceed** levels that are protective of human health or environmental receptors as a result of the violation. Unauthorized diversion, taking, or storage of an insignificant amount of state water or an insignificant unauthorized change in flood elevation of a stream which does not detrimentally affect aquatic life or result in a safety hazard, property damage or economic loss.	Human health or the environment will or could be exposed to **insignificant** amounts of pollutants which **would not exceed** levels that are protective of human health or environmental receptors as a result of the violation. Potential for unauthorized diversion, taking, or storage of an insignificant amount of state water or an insignificant unauthorized change in flood elevation of a stream which would not detrimentally affect aquatic life or result in a safety hazard, property damage or economic loss.

Calculation: Each violation included in the enforcement action will be evaluated and categorized as *actual release* or *potential release* and then as major, moderate, or minor. The appropriate percentage (see the chart) will be multiplied by the highest penalty amount allowed by the applicable statute (see discussion in "Statutory Authorizations"). This amount will be the *base penalty amount*.

In the Programmatic Penalty Matrix, violations will be categorized as major, moderate, or minor, based upon the degree of noncompliance. Programmatic violations include, for example, a failure to submit reports, a failure to maintain records, or a failure to obtain a permit or other authorization. Appendices 1 and 2 contain program-specific examples of programmatic violations.

PROGRAMMATIC PENALTY MATRIX

Major	**Moderate**	**Minor**
Major / Minor Entity	Major / Minor Entity	Major / Minor Entity
25% / 10%	10% / 5%	1% / 1%

In the context of the penalty matrix, *programmatic major* means that all or almost all (greater than 70%) of a rule or permit requirement is not met, *programmatic moderate* means that much (30 to

70%) of a rule or permit requirement is not met, and *programmatic minor* means that most, but not all (at least 70%), of a rule or permit requirement is met. One exception to the use of this matrix is that the falsification of records will be assessed at *100 percent of the statutory maximum penalty.*

Determining the Number of Violation Events

The number of violation events that will be assessed a penalty depends on: the number of times the violation is observed, the specific requirement violated, the duration of the violation, and other case information.

Certain violations will typically be considered discrete events. For these violations, one penalty event will be assessed for every documented observation. Discrete violations are situations that are observed and documented during an inspection - a discrete interval in time. These violations involve practices or actions that do not occur continuously. If they recur, they do so in individual instances that are separate in time. Examples of violations that would be discrete events are the failure to submit annual reports, the failure to collect or report monitoring data, and the failure to perform a hazardous waste determination where required. For discretely occurring violations, one penalty event will be assessed for every documented observation of the noncompliance (e.g., for each sample analysis documenting a violation).

Other violations are considered to be *continuing.* These violations are not constrained by documented observations of the noncompliance. Examples of violations that would be considered to be continuing are the exceeding of permitted discharge or emission limits, groundwater contamination, unauthorized discharges/releases, endangerment, the commingling of good and bad water in a public water supply, operating without a required permit, and other such violations. For continuing violations, the number of events will be linked to the level of impact of the violation by considering the violation as if it recurred with the frequency shown in the chart below.

Continuing Violations

	Harm or Severity	Number of Events
Actual Releases:	Major	Up to daily
	Moderate	Up to monthly
	Minor	Up to quarterly
Potential Releases:	Major	Up to monthly
	Moderate	Up to quarterly

		Minor	Single event
Programmatic:	Major		Up to daily
		Moderate	Up to quarterly
		Minor	Single event

The duration of events concerning continuous violations, for the purposes of preparing an enforcement action, may begin with the initial date of noncompliance with a requirement, rule, or permit and extend up to the time that the enforcement documents are prepared.

Calculation: Multiply the *base penalty amount* by the number of penalty events determined for the violation being considered. Do this step for each violation included in the enforcement action. Total the *base penalty amounts* to obtain *subtotal 1*.

Evaluating Adjustments to the Penalty Amount

Any adjustments to the penalty amounts will be made after a base penalty multiplied by the number of events is established for all violations included in the enforcement action. Adjustments to the penalty amount may be made based upon the following factors relating to the violator:

- culpability
- good-faith effort to comply
- compliance history
- economic benefit gained through noncompliance
- other factors as justice may require

CULPABILITY

In assessing culpability, staff will determine whether the violator could have reasonably anticipated and avoided the violation(s). This determination will be made on a site-specific basis and will examine a five-year history. In order to answer this question, staff will review the following:

- whether the violator received a previous NOV, verbal or written, for similar violations;
- whether the violator had submitted compliance plans for prior violations noted in the same program; and
- whether documentation that indicates culpability exists.

If the answer to any of the above issues is “yes,” then 25% will be added to the penalty amount. If the answer to the above is “no,” then nothing will be added to the penalty amount.

Calculation: Multiply *subtotal 1* by 25% or 0% as appropriate to obtain *subtotal 2*.

GOOD-FAITH EFFORT TO COMPLY

When deciding how to apply the reduction for good-faith efforts, it is important to note that the staff will consider the respondent's efforts to bring the facility into complete compliance with all applicable rules and regulations. Thus, any reduction will be applied to all violations and events.

The analysis of good-faith efforts involves two factors—the timeliness of the respondent's action and the quality of that action. Accordingly, the respondent is to be given credit for timeliness, quality, or both.

Timeliness is defined by when the respondent took action to correct the violations. The following are two scenarios that will be considered:

- Corrective actions are taken before there is an executive director's preliminary report (EDPRP) or draft order initiated but after the issuance of an NOV.
- Corrective actions are taken as soon as violations are identified and before the issuance of an NOV.

Quality is defined as the degree to which the entity takes action. The two categories of quality are extraordinary and ordinary. *Extraordinary* is defined as action taken by the entity which goes beyond what would be expected under the rules. *Ordinary* is defined as action taken by the entity to correct the violations as expected under the rules.

The following matrices describe how much of a reduction can be given for good-faith efforts. The maximum reduction is 50 percent unless the violator is considered culpable in the previous section and then the maximum reduction allowed for good-faith effort will be reduced to no more than 25 percent. Violators that are considered culpable will not receive a reduction for corrective action taken after the issuance of an NOV.

PERCENTAGE REDUCTIONS FOR TIMELINESS WITH NO CULPABILITY

QUALITY OF ACTION	ACTION BEFORE NOV	ACTION BETWEEN NOV & EDPRP/ORDER
Extraordinary	50%	25%
Ordinary	25%	10%

PERCENTAGE REDUCTION FOR TIMELINESS WITH CULPABILITY

QUALITY OF ACTION	ACTION BEFORE NOV

Extraordinary	25%
Ordinary	25%

Calculation: Multiply *subtotal 1* by the appropriate good-faith percentage to obtain *subtotal 3*.

COMPLIANCE HISTORY

When assessing compliance history, staff will examine a five-year history of the violator in all programs of all media under the jurisdiction of the TNRCC for the specific site under enforcement. Additionally, in evaluating the violator, staff will also consider the histories of all of its locations in the state for the media of concern in the enforcement action (e.g., multiple water or wastewater plants owned by a city; parent, sister, daughter companies in a corporate entity; companies owned by each partner in a partnership). If the violator is the subject of enforcement action for the fourth time or more, then staff will evaluate the compliance history of all of its locations in the state for all media. If the site of the violation underwent a change in ownership, staff will examine the five-year histories of the site itself and the new owner.

Staff will look specifically for previous commission or federal enforcement orders that include findings of facts and conclusions of law (Findings Orders issued after September 1, 1995), district court orders, federal court orders or criminal convictions related to environmental laws. Each such order issued to the violator in the five years prior to the date of the inspection or record review that documented the violations is considered a "time through enforcement." The penalty amount will be increased according to the chart below:

MATRIX FOR COMPLIANCE HISTORY

Site Specific History - All Media	Site Specific History - Multimedia and Entity Wide history - Single Media	Entity Wide History Only - Single Media	Site Specific and Entity Wide History - All Media	Number of Times Through Enforcement Including Current Action
25%	30%	10%		2nd time through enforcement
50%	70%	10%		3rd time through enforcement
			100%	4 or more times through enforcement

Calculation: Multiply *subtotal 1* by the appropriate percentage from the chart to obtain *subtotal 4*.

ECONOMIC BENEFIT

Economic benefit is defined as monetary gain derived from a failure to comply with TNRCC rules or regulations. Economic benefit may include any or all of the following: (1) the return a violator can earn by *delaying* the capital costs of pollution control equipment; (2) the return a violator can earn by *delaying* a one-time expenditure; and (3) the return a violator can earn by *avoiding* periodic

costs.

To determine whether a violator has gained an economic benefit (during the alleged violation period), staff must evaluate the following issues for *each* violation:

1. Did the entity avoid or delay capital outlay for item(s) specifically required by a permit or rule that is applicable to the facility or unit in question?

2. Did the entity gain any interest by avoiding or delaying capital outlay for item(s) specifically required by a permit or rule that is applicable to the facility or unit in question?

3. Did the entity gain an economic advantage over its competitors?

4. Did the entity avoid or delay disposal, maintenance, and/or operating costs?

5. Did the entity receive increased revenue due to noncompliance?

6. Did the entity avoid the purchase of financial assurance for item(s) specifically required by a permit or rule that is applicable to the facility or unit in question?

If the answer is "yes" to any of the above questions, then staff will estimate the overall economic benefit gained. Only capital expenditures, one-time nondepreciable expenditures, periodic costs, and interest gained will be evaluated in the calculation of economic benefit.

Capital expenditures will include all depreciable investment outlays necessary to achieve compliance with the environmental regulation or permit. Depreciable capital investments are usually made for things that wear out, such as buildings, equipment, or other long-lived assets. Typical environmental capital investments include groundwater monitoring wells, stack scrubbers, and wastewater treatment systems.

One-time nondepreciable expenditures include delayed costs the violator should have made earlier (to prevent the violations) which need only be made once and are not depreciable (i.e., do not wear out). Such an expenditure could be purchasing land, setting up a record-keeping system, removing illegal discharges of dredged and fill material, disposing of soil from a hazardous waste site, or providing initial training to employees.

Periodic costs are recurring costs associated with operating and maintaining the required pollution control equipment.

Economic benefit will be linked to culpability. Once the economic benefit has been estimated and totaled for all violations included in the enforcement actions, it should be compared to the following criteria, and the penalty amount will be increased accordingly. The economic adjustment factor will be capped so the adjustment amount does not exceed the economic benefit gained.

ECONOMIC BENEFIT MATRIX

% Adjustment		Dollar Range of Benefit
Culpability	No Culpability	
None	None	Less than $25,000
50%	10%	Equal to or greater than $25,000

Calculation: Determine the estimate of the economic benefit of each violation included in the enforcement action, then determine the range that the estimate fits for each violation, and multiply the associated percentage, based upon culpability, by the penalty amount assessed for that violation. Add all of the economic benefit adjustments to obtain *subtotal 5*.

A final subtotal is determined by adding *subtotal 1*, *subtotal 2*, *subtotal 4*, and *subtotal 5* and subtracting *subtotal 3*.

OTHER FACTORS THAT JUSTICE MAY REQUIRE

The staff may recommend adjustment of the penalty amount, on a case-by-case basis, upon a consideration of factors unique to the situation. Staff may recommend just adjustment up to 100 percent of the penalty amount. This adjustment may result in an increase or decrease of the penalty amount.

A downward adjustment due to "other factors that justice may require" may be appropriate when, for example, the TNRCC is notified of the violation(s) by the entity or violator. If the notification is not required by statute, permit, or rule, staff may recommend up to a 50 percent downward adjustment.

Calculation: Multiply the *final subtotal* by the recommended percentage to obtain the *final penalty amount.*

Adjusted Total Penalty Amount Recommendation

The *final penalty amount* will be checked against the minimum and maximum penalty amounts allowed by statute per violation per day in order to obtain the *final assessed penalty*.

Standardized Penalties

Appendix 3 contains a list of violations of statutes or rules for which the commission has established *standard base penalty amounts*. These *standard base penalty amounts* were established utilizing the penalty matrix, assuming a total failure to comply with the requirement of the statute or rule. Staff will utilize Appendix 3 when developing cases if the case involves a complete and total violation of the requirement of the statute or rule. If the violator was in partial compliance, then staff will evaluate the violation by utilizing the matrix as described above. Additionally, staff will evaluate each *standard base penalty amount* to determine whether it should be adjusted according to the procedures described in "Evaluating Adjustments to the Penalty Amount."

Appendix 1
Examples of Violations—Categorized
Final
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The examples provided in this appendix for one program area may also apply to other program areas. The examples are not intended to be all-encompassing.

ACTUAL RELEASE

Actual Release—Air

- emissions from a reversal at a fluid catalytic cracking unit sent local residents to the emergency room with breathing difficulties and/or eye, nose, and throat irritation
- tank bottom failed on a large crude oil storage tank releasing the entire contents to the containment area; H_2S emissions caused the evacuation of an entire neighborhood and sent people to the hospital
- sawdust emissions from a cabinet shop operating without the required emission controls
- outdoor burning caused smoke emissions to limit visibility across a roadway creating a traffic hazard
- TNRCC mobile lab detected concentrations of sulfur dioxide >0.4 ppmv in a residential neighborhood downwind of an SO_2 source

Actual Release—Waste

Industrial and Hazardous Waste

- release of hazardous waste constituents to groundwater or surface water
- release of hazardous waste onto adjacent property
- unauthorized disposal of hazardous waste

Municipal Solid Waste

- illegal discharge of water that has come into contact with exposed municipal solid waste and entering directly into an off-site water pathway.

- concentration of methane gas detected in off-site structures adjacent to the landfill permitted metes and bounds in excess of the lower explosive limit (LEL) for methane
- unauthorized disposal of municipal solid waste

Petroleum Storage Tanks

- failure to initiate abatement measures in response to a release from a UST/AST
- failure to perform an investigation due to off-site impacts
- failure to recover free product to the maximum extent practicable

Underground Injection Control Program

- contamination of an underground source of drinking water by an injection well
- unauthorized injection
- uncontained leaks in hazardous waste flow lines or tanks or at wellhead
- injection of fluids into unauthorized zones
- injection of unauthorized fluids

Radioactive Substances

- radiation level in an unrestricted area such that an individual could receive greater than two millirems in any one-hour period or 100 millirems in any seven consecutive days

Actual Release—Water

Concentrated Animal Feeding Operations (CAFOs)

- discharge of wastewater not associated with a rainfall event

Public Water Supply

- failure to treat drinking water causes a widespread waterborne illness
- inorganic contamination of a drinking water well
- failure to maintain adequate chlorine residual in PWS distribution system

Wastewater

- discharge of raw or untreated wastewater or other wastes adjacent to a creek
- wastewater impoundment leaking past liner causes groundwater contamination
- discharge of wastewater that exceeds permit limits
- a spill event releasing more than a reportable quantity
- operating a wastewater treatment facility without authorization from the TNRCC
- over application of irrigation effluent

Water Rights

- Diverting, taking, or storing water without a water right
- Diverting , taking, or storing water above the authorized amount
- Diverting above the authorized diversion rate
- Diverting water for a use not specified in the water right
- Diversion in excess of an authorization to divert, granted by a water master

Levees

- Levee construction or other modification in a floodway causing property damage
- Levee construction or other modification in a floodway without Executive Director approval

POTENTIAL RELEASE

Potential Release—Air

- large stacks of wood mulch exceed permitted heights increasing the potential for fire
- the backup recorder on the incinerator temperature log did not have any paper in it
- failure to use an approved test method

Potential Release—Waste

Industrial and Hazardous Waste

- hazardous waste spill to impermeable surface
- failure to properly install or plug a groundwater monitoring well
- failure to inspect tank system on a daily basis
- failure to properly collect data
- failure to maintain waste management units properly
- failure to make a hazardous waste determination
- failure to properly train employees who have the responsibility of consolidating waste chemicals (mixing wastes) regarding management of hazardous wastes

Municipal Solid Waste

- daily cover over deposited MSW is not being applied and thereby is a contributing factor in the collection of vectors at the site working face
- erosion of intermediate and/or final cover is not repaired and thereby is a contributing factor in the collection of vectors at the site of the erosion
- concentration of methane gas detected in on-site perimeter monitoring probes are well in excess of the LEL for methane, and off-site structures are located in close proximity to the probes detecting high methane gas concentrations (if measures are not taken immediately, an actual impact is highly likely to occur)
- failure to properly administer the site operating plan at MSW landfills

Petroleum Storage Tanks

- failure to perform investigation and confirmation steps in response to a suspected release
- failure to properly remove from service a UST
- failure to comply with some UST technical standards
- failure to install spill and overfill prevention controls
- failure to perform release detection for a UST system

Underground Injection Control Program

- fences missing or in disrepair
- injection well improperly plugged and abandoned
- permitted pressure limits exceeded
- corrosion tests not performed as required by rule or permit
- automatic alarms and shutoff devices not operational
- gauges, pressure-sensing devices, and recording devices not calibrated as required by rule or permit
- failure to provide required advance notification of well work over
- gauges and recorders not maintained in proper working order
- failure to cease injection after loss of mechanical integrity is detected (without authorization from the TNRCC)

Radioactive Substances

- Failure to conduct required leakage or contamination tests or to use properly calibrated equipment

Potential Release—Water

Concentrated Animal Feeding Operations

- failure to have a wastewater pond marker to gauge the amount of wastewater
- a CAFO does not have waste containment facility necessary to prevent a discharge of wastewater pollutants during a rainfall event

- failure to maintain proper solids levels in wastewater lagoons at CAFOs.

Public Water Supply

- failure to flush water mains or inspect water tanks
- failure to inspect storage tanks annually
- failure of a public water supply or operator to sample in order to ensure that a person's drinking water is not contaminated with organisms or other contaminants

Wastewater

- failure to properly operate and maintain a wastewater treatment plant, but discharge is meeting permit limits

Water Rights

- Failure to maintain required measuring devices at points that enable the watermaster or Executive Director to determine quantities of water to be taken

Levees

- Project not constructed in accordance with approved plans
- Approved project not accessible for maintenance or repair

Potential Release—Occupational Certification Programs

For OSSF Installer and Landscape Irrigators

- landscape irrigator does not install system to manufacturer's specification, but the system works properly
- failure to evenly grade area where a septic system was installed

For Water Operators and Wastewater Operators

- operator does not follow the operation and maintenance program to the letter, but the system otherwise functions properly

PROGRAMMATIC

Programmatic—Air

- galvanizing facility operating without a permit
- failure to pay emission fees
- company failure to comply with record-keeping and reporting requirements contained in its permit, TNRCC rules, or federal rules
- car sales lot did not have the required vehicle tampering sign displayed
- company failed to include accurate emission data on their permit application
- company operating under standard exemption and complying with the standard exemption, but failed to submit PI-7
- company emitting pollutants but does not meet the distance requirement in the standard exemption

Programmatic—Waste

Industrial and Hazardous Waste

- failure to provide or maintain financial assurance
- failure to obtain a permit prior to construction
- failure to provide notification
- failure to manifest waste shipments
- failure to submit annual generator report
- failure to update notice of registration
- incomplete manifest information

Municipal Solid Waste

- operating a transfer facility in accordance with TNRCC rules, but without a registration
- cover log at the landfill has not been accurately maintained on a daily basis
- MSW permitted site has no sign at the entrance to the landfill, or the existing sign does not have the

information required

Petroleum Storage Tanks

- failure to register a UST/AST
- failure to provide construction notification

Underground Injection Control Program

- failure to provide required advance notification of well work over
- construction of injection well without permit or other authorization

Radioactive Substances

- Failure to maintain complete records and/or forms as required

Programmatic—Water

Wastewater

- conducting beneficial reuse of domestic sewage sludge in accord with TNRCC rules, but without obtaining a registration
- failure to submit monthly effluent monitoring reports
- failure to notify of a spill event releasing more than a reportable quantity
- failure to submit documents such as plans, reports, notices, or data by a required deadline
- incomplete or deficient records, applications, or other required documents maintained on-site
- operating a wastewater treatment plant prior to obtaining a permit or other authorization

Public Water Supply

- failure to submit plans and specifications for a system prior to construction
- retail public utility operating a PWS in accordance with TNRCC rules, but did not obtain a CCN
- failure to maintain sample documentation, such as chlorine residual testing

Concentrated Animal Feeding Operations

- failure to submit certification documenting completion and operation of a facility

Water Rights

- Failure to display information on authorization to divert where required
- Failure to notify the watermaster prior to diversion
- Failure to submit a complete water rights annual report where required

Levees

- Failure to submit monthly progress reports

Appendix 2

Examples of Actual Releases, Potential Releases, and Programmatic Violations
Final
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The examples provided for a given program area in this appendix may also apply to other program areas. The examples are not intended to be all-encompassing.

Actual Release—Major

- Tank bottom failed on a large crude storage tank, releasing the entire contents to the containment area; hydrogen sulfide (H_2S) emissions caused the evacuation of an entire neighborhood and sent people to the hospital.

- Company took a major piece of control equipment off-line due to corrosion, but continued to operate. The emissions caused severe damage to property and vegetation.

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- Hydrogen fluoride (HF) release drifted past property line.

- Failure to cease use of hazardous waste tank leaking more than 2 pounds per day to environment.

- Mixing incompatible wastes in a drum results in an explosion, a fire, or the generation of toxic gas.

- Unauthorized discharge of raw wastewater or partially treated wastewater into a stream, resulting in a high incidence of reported gastrointestinal problems.

- Discharge of wastewater effluent that exceeded the permit limit of 4 milligrams per liter chlorine residual, resulting in a fish kill and/or damage to aquatic habitat.

- Dry waste from a turkey farm was spread on agricultural land. Part of the waste was not plowed under, and rains washed waste into a neighbor’s stock pond, killing fish.

- A public water supply (PWS) is providing water to its customers that exceeds the maximum contaminant level for acute primary contaminants.

- A PWS using a surface water source is failing to maintain the disinfection level established by its Concentration/Time study.

- Groundwater with a total dissolved solids (TDS) content of less than 3,000 mg/l (fresh to slightly saline) is contaminated with regulated substances. Groundwater is currently used, or could be used, for private, public supply, irrigation, livestock, or agricultural purposes. Example: Gasoline is released from an underground storage tank and contaminates groundwater with a TDS of 1,000 mg/l.

- Contamination of a drinking water well by an underground injection well.

- Release of radioactive material to an unrestricted area in excess of the limits of 30 TAC Chapter 336.

- Use of a new diversion point without authorization and there are intervening water right holders.

- Diverting or storing state water above authorized amounts which deprives a senior water right holder of water.

- Diverting water in violation of a stream flow restriction.

- Levee construction or other project causing property damage.

Actual Release—Moderate

- VOC emissions from a paint manufacturing facility located in an ozone nonattainment area exceeded the permit allowable level.

- Outdoor burning caused emission (smoke) over a roadway, creating a traffic hazard.

- Nuisance dust from a commercial construction project prevents normal use and enjoyment of a complainant's property, but does not cause any acute health effects.

- Failure to cease use of hazardous waste tank leaking more than 1 pound but less than 2 pounds per day to the environment.

- Mixing incompatible wastes in a drum results in the generation of a flammable gas.

- Facility discharged wastewater exceeding lead permit limit by 15 percent, but no specific environmental impacts were noted.

- A PWS is providing its customers with water that exceeds the maximum contaminant level for *all* primary contaminants other than acute.

- A PWS using a groundwater source is failing to maintain a disinfection residual.

- Groundwater with a TDS of 3,000 to 10,000 mg/l, (moderately saline) is contaminated with regulated substances. Water is currently used, or could be used, for public or private use. Example: Methyl ethyl ketone is released from a facility and contaminates groundwater with a TDS of 5,000 mg/l.

- Failure to install and operate the Stage II controls at a fuel dispensing facility.

- Diverting or storing state water above authorized amounts and water right holder not deprived and no adverse impact to aquatic life.

- Levee construction or other improvement in a floodway causes land to go under water but no damage occurs.

Actual Release—Minor

- Company found a small leak in a vapor control line and did not attempt to repair the leak.

- Failure to cease use of hazardous waste tank leaking less than 1 pound per day to the environment.

- Mixing incompatible wastes in a drum results only in the generation of heat.

- Facility discharged effluent exceeding the $CBOD_5$ by 25 percent, but no specific environmental impacts were noted.

- Unauthorized discharge to a dry ditch of a low volume of wastewater with low toxicity.
- A PWS is providing water to its customers that exceeds the maximum contaminant level for iron or manganese (secondary contaminants).

- OSSF installer's failure to properly construct on-site sewage disposal system, causing minor backups, odors, or percolation to surface.

- Failure to install proper filter system on a residential water treatment facility.

- Water operator's and wastewater operator's allowance of minor chlorination problems in system.

- Groundwater that is not usable is contaminated with regulated substances. Example: Groundwater with a TDS of 19,000 mg/l is contaminated by a release of toluene.

- Injection into unauthorized zone below lowest source of drinking water.
- Diverting above the authorized diversion rate very minimally (as defined by water right permit or watermaster rules).
- A change in the diversion point without authorization when there are no intervening water rights holders.
- Diverting water for a use not specified in the water right.

Potential Release—Major

- Company put a tank into benzene storage service without inspecting seals.
- Unauthorized storage of spontaneously combustible materials at a tire recycling facility.
- Failure to cease use of hazardous waste tank leaking more than 2 pounds per day to secondary containment.
- Lead smelter fails to maintain and operate control equipment properly.
- A facility is not operating or maintaining its WWTP properly, but is still compliant with permit limits.
- A facility is not performing the minimum process control testing as required by its permit.
- A facility has failed to implement its approved operation and maintenance or solids management plan.
- A concentrated animal feeding operation (CAFO) has failed to maintain the solids level in its wastewater lagoon at a level that is low enough to control a rainfall event.
- A PWS is providing its customers with water that exceeds the maximum contaminant level for all secondary contaminants other than iron or manganese.
- A PWS is providing water to its customers at a pressure between 20 and 35 psi.
- OSSF installer's, landscape irrigator's, or residential water treatment facility operator's failure to properly install or construct an on-site sewage disposal system, landscape irrigation system (backflow prevention), or residential water treatment system where groundwater, surface water, or public or domestic water supply will be affected if the problem is not corrected.

- Misrepresenting soil type for the necessary type of on-site sewage disposal system to be installed on a permit application.
- Water operator's or wastewater operator's failure to properly operate and maintain a water or wastewater system.
- Gauges or pressure-sensing or recording devices are not calibrated.
- Failure to provide secondary containment and leak detection for tanks used for storing or treating hazardous waste.
- A PWS has failed to sample for lead/copper and microbiological contamination.
- A required system or equipment designed to prevent or mitigate a serious radioactive substances safety event or unnecessary exposure is absent or inoperable.
- Failure to construct or maintain required measuring devices at points that enable the watermaster or Executive Director to determine the quantities of water to be diverted, taken, stored, released, or distributed.
- Failure to construct levee or other such improvement in accordance with approved plans.

Potential Release—Moderate

- Entity is exceeding height requirement stated in its permit for bark mulch storage, increasing potential for fire; pile is located in an area adjacent to occupied facilities.
- Failure to cease use of hazardous waste tank leaking more than 1 pound but less than 2 pounds per day to secondary containment.
- Facility is exceeding the irrigation rate stated in its land disposal permit.
- A PWS fails to have the proper appurtenances for its wells and storage tanks, (e.g., screened vents, overflow flaps).
- Failure to provide secondary containment designed to contain 100 percent of the capacity of a tank used for storing or treating hazardous waste regardless of how full tank is.
- Failure to control access to licensed radioactive substances as specified by agency rules.
- Failure to maintain levee or other such improvement in accordance with approved operation

and maintenance and budget schedule.

Potential Release—Minor

- Entity does not apply water daily to dirt road, as required in permit, during a week with intermittent rains.
- Failure to cease use of hazardous waste tank leaking less than 1 pound per day to secondary containment.
- A PWS fails to provide the proper general maintenance of its facilities.
- OSSF installers did not evenly grade and seed the area where a septic system was installed, but otherwise constructed the system properly.
- Landscape irrigators and residential water treatment facility operators did not install equipment to manufacturer's installation specifications, but the system otherwise functions properly.
- Water operators and wastewater operators do not follow operations and maintenance programs to the letter, but the systems otherwise function properly.
- Failure to keep a hazardous waste satellite accumulation container closed (this includes the absence of a bung).
- Failure to provide secondary containment free of cracks or gaps for tanks used for storing or treating hazardous waste.
- A PWS using a groundwater source does not have sanitary easements for the well, but no livestock or septic drain fields are in the area.
- Failure to inspect tanks and tank systems daily.
- A PWS is unable to provide capacity that meets the peak demand.
- Failure to sample as required by rules and/or permit.
- Failure to perform weekly impoundment inspections as required by radioactive substances rules.

- Modified channels not accessible for maintenance or repair but there is minimal potential for flooding impacts.

Programmatic—Major

- Company operating a new rendering cooker without a permit.
- A PWS has failed to submit plans and specifications for a system prior to construction.
- A PWS is operating without the required number of certified operators or without certified operators of the proper level of certification.
- Entity fails to have the proper signs.
- A water or sewer utility is operating without a certificate of convenience and necessity (CCN).
- OSSF installer fails to obtain permit to construct an on-site sewage disposal system.
- Failure of a water utility to submit a notice of intent to change rates.
- Failure to submit a release report.
- Entity did not keep the records required to document compliance with 30 TAC Section 106.436 (previously SE 124) (auto body painting).
- Entity fails to maintain on-site records that are required by a permit provision.
- Failure to document inspection of tanks and tanks systems.
- Failure to maintain any on-site records, such as of sampling, flow, operation and maintenance, and sludge disposal.
- Water operator's failure to maintain a site sampling plan and chlorine residual data on site.
- Wastewater operator's failure to maintain daily operational log book.
- Monitoring and record keeping not being done at a dry cleaning facility.
- Electric utility fails to "submit" continuous emission monitoring (CEM) reports required by federal regulations.

- Failure to notify executive director of any reportable release to the environment; failure to submit a release report to the executive director.
- Failure to submit inspection reports for benzene storage vessels.
- Failure to report an upset that resulted in an excessive emission of pollutants.
- Failure to submit monthly effluent report as required by the permit.
- Permanent marker not placed at plugged injection well.
- Possession of radioactive materials without a license.
- Failure to include four of five items required by the release report.
- Failure to display information on authorization to divert where required.
- Failure to notify and receive the watermaster's approval prior to diversion.
- Construction of levee or other project without submittal of final plans and specifications.

Programmatic—Moderate

- Complete failure to label one of three hazardous waste tanks.
- Company changed processes to eliminate a highly toxic solvent and replaced it with a solvent of lower toxicity, which resulted in a slight increase in overall emissions, without a permit review.
- Failure to include two or three of the five items required by the release report.
- Failure to maintain complete records and/or forms required by radioactive substances rules.
- Failure to adequately maintain construction progress, maintenance and repair records.

Programmatic—Minor

- Failure to properly label a hazardous waste tank or container.
- Strip recorder for documenting exit temperature on a boiler runs out of paper, but no excess emissions were documented before or immediately after paper was replaced.
- Failure to include one of five items required by the release report.
- Failure to record name of inspector in an inspection log, but inspection was conducted and recorded.
- A water or sewer utility fails to file a complete report required by Title 30 Texas Administrative Code Chapter 291.
- Failure to record date in inspection log as required by 30 TAC Chapter 336.

Appendix 3

Standardized Penalties
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Appendix 3 contains a list of violations of statute or rules for which the commission has established standard base penalty amounts. The standard base penalty amounts were established utilizing the penalty matrices assuming total noncompliance with the requirements of the statute or rule. If the violator was in partial compliance with the applicable requirement, then staff will evaluate the violation, using the matrices as described in the text of the policy. Staff will also evaluate each standard base penalty amount to determine whether it should be adjusted according to the procedures described in the section of the policy entitled "Evaluating Adjustments to the Penalty Amount."

Chapter	Violation	Matrix Position	Recommended Penalty (Majors)	Recommended Penalty (Minors)
101.5	Traffic hazard	Actual/minor	2,500.00	1,000.00
101.10	Emission inventory requirements	Program./major	2,500.00	1,000.00
101.24	Inspection fees+	Program./major	2,500.00	1,000.00
101.27	Emission fees	Program./major	2,500.00	1,000.00
111.127 (b) and (d)	Record-keeping requirements for incinerators	Program./major	2,500.00	1,000.00
111.129	Operating requirements for incinerators	Potential/moderate	2,500.00	1,000.00
114.1(c)(1) and (2)	Vehicle tampering	Potential/minor	1,000.00	500.00
114.1(c)(3)	Sign posting	Program./major	2,500.00	1,000.00
114.3(c)	Vehicle inspection requirements	Potential/minor	1,000.00	500.00
115.116 (a)(1) or (b)(1)	Record-keeping requirements for VOC storage	Potential/minor	1,000.00	500.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
115.146	Record-keeping requirements for industrial wastewater	Program./major	2,500.00	1,000.00
115.221	Emission specifications for Stage I (failure to ensure that displaced vapors from the transfer of gasoline from any delivery vessel into a stationary storage container are controlled by either a vapor recovery system or a vapor balance system)	Actual/moderate	5,000.00	2,500.00
115.226	Record-keeping requirements for filling of gasoline storage vessels (Stage I)	Program./major	2,500.00	1,000.00
115.234	Inspection requirements for control of VOC leaks from transport vessels	Potential/moderate	2,500.00	1,000.00
115.235	Approved test methods for control of VOC leaks from transport vessels	Potential/moderate	2,500.00	1,000.00
115.236	Record-keeping requirements for control of VOC leaks from transport vessels	Program./major	2,500.00	1,000.00
115.241	Emission specifications for control of vehicle refueling emissions (Stage II) at motor vehicle fuel dispensing facilities	Actual/moderate	5,000.00	2,500.00
115.244	Inspection requirements for control of vehicle refueling emissions (Stage II) at motor vehicle fuel dispensing facilities	Potential/moderate	2,500.00	1,000.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
115.245	Testing requirements for control of vehicle refueling emissions (Stage II) at motor vehicle fuel dispensing facilities	Potential/moderate	2,500.00	1,000.00
115.246	Record-keeping requirements for control of vehicle refueling emissions (Stage II) at motor vehicle fuel dispensing facilities	Program./major	2,500.00	1,000.00
115.326	Record-keeping requirements for fugitive emission control in petroleum refineries	Program./major	2,500.00	1,000.00
115.336	Record-keeping requirements for fugitive emission control in synthetic organic chemical, polymer, resin, and methyl tert-butyl ether manufacturing processes	Program./major	2,500.00	1,000.00
115.346	Record-keeping requirements for fugitive emission control in natural gas/gasoline processing operations	Program./major	2,500.00	1,000.00
115.356	Record-keeping requirements for fugitive emission control in petroleum refining and petrochemical processes	Program./major	2,500.00	1,000.00
115.416	Record-keeping requirements for solvent using processes/degreasing and cleanup processes	Program./major	2,500.00	1,000.00
115.516	Record-keeping requirements for cutback asphalt	Program./major	2,500.00	1,000.00
115.522	Control requirements for perchloroethylene dry cleaning systems	Actual/moderate	5,000.00	2,500.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
115.524	Inspection requirements for perchloroethylene dry cleaning systems	Potential/moderate	2,500.00	1,000.00
115.525	Testing requirements for perchloroethylene dry cleaning systems	Potential/moderate	2,500.00	1,000.00
115.526	Record-keeping requirements for perchloroethylene dry cleaning systems	Program./major	2,500.00	1,000.00
115.552	Control requirements for petroleum dry cleaning systems	Actual/Minor	2,500.00	1,000.00
115.555	Testing methods and procedures for petroleum dry cleaning systems	Potential/minor	1,000.00	500.00
115.556	Record-keeping requirements for petroleum dry cleaning systems	Program./major	2,500.00	1,000.00
118.5	Emission reduction plan	Program./major	2,500.00	1,000.00
122.120	Applicability for permit requirements (federal operating permit; no permit)	Program./major	2,500.00	1,000.00
285.107	Fraud (not performing services paid for)	Program./major	625.00	250.00
285.109(a)	Not obtaining OSSF permit	Program./major	625.00	250.00
285.109(b)	Installing without an OSSF license	Potential/major	1,250.00	625.00
290.41(c)(3)(M)	Sampling tap	Potential/minor	100.00	50.00
290.41(c)(3)(N)	Well meter	Program./major	250.00	100.00
290.41(c)(3)(P)	All-weather road	Potential/minor	100.00	50.00
290.42(e)(2)(3)	Disinfection prior to storage	Actual/major	1,000.00	500.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
290.42(e)(4)(D)	Scales	Potential/major	500.00	250.00
290.42(e)(5)	Breathing apparatus/ammonia bottle	Potential/major	500.00	250.00
290.42(e)(6)(8)	Disinfection equipment housing	Potential/major	500.00	250.00
290.42(e)(7)	Disinfection room vented	Potential/major	500.00	250.00
290.43(c)	Inspection ladder	Program./major	250.00	100.00
290.43(c)	Storage tank cover	Potential/major	500.00	250.00
290.43(c)(1)	Storage tank vents	Potential/major	500.00	250.00
290.43(c)(3)	Storage tank overflow	Potential/major	500.00	250.00
290.43(c)(4)	Storage water level indicator	Potential/minor	100.00	50.00
290.43(c)(5)	Inlet/outlet properly located—storage	Potential/major	500.00	250.00
290.43(c)(6)	Leaking storage tank	Potential/major	500.00	250.00
290.43(c)(7)	Properly connected drains—storage	Potential/major	500.00	250.00
290.43(d)(1)	ASME pressure tank	Potential/major	500.00	250.00
290.43(d)(2)	Pressure gauges/pressure relief device	Potential/major	500.00	250.00
290.43(d)(3)	Air/water ratio gauge and volume indicator	Potential/moderate	250.00	100.00
290.44(d)(4)	Retail meters	Program./major	250.00	100.00
290.44(d)(6)	Flush/gate valves	Potential/major	500.00	250.00
290.46(d)	Monthly reports	Program./major	250.00	100.00
290.46(e)	Operation by certified personnel	Potential/major	500.00	250.00
290.46(f)(2)	DPD chlorine test kit	Potential/major	500.00	250.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
290.46(h)	Supply of disinfectant	Potential/major	500.00	250.00
290.46(i)	Plumbing ordinance or agreement	Program./major	250.00	100.00
290.46(j)	Record of customer service inspection	Program./major	250.00	100.00
290.46(n)	Distribution map	Program./major	250.00	100.00
290.46(p)(1)	Storage tanks inspected, maintained	Potential/moderate	250.00	100.00
290.46(p)(2)	Pressure tanks inspected, maintained	Potential/major	500.00	250.00
290.46(w)	Ownership signs	Program./major	250.00	100.00
290.103(5)(A)	Quality MCL public notification	Program./major	250.00	100.00
290.106	Bacteriological monitoring	Potential/major	500.00	250.00
290.110	Radiological sampling and analytical requirements	Potential/major	500.00	250.00
290.112	Record-keeping and reporting required of water systems	Program./major	250.00	100.00
290.113(c)	Fluoride public notification	Program./major	250.00	100.00
290.117	Disinfection (surface water chlorine residual)	Actual/Major	1,000.00	500.00
290.118	Filtration (surface water turbidity limits)	Actual/Major	1,000.00	500.00
290.119	Surface water monitoring	Potential/major	500.00	250.00
291.21	Form and filing of tariffs	Program./major	250.00	100.00
291.22	Notice of intent to change rates	Program./major	250.00	100.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
291.72	Financial records and reports— uniform system of accounts	Program./major	250.00	100.00
291.73	Water and sewer utilities annual reports	Program./major	250.00	100.00
291.74	Maintenance and location of records	Program./major	250.00	100.00
291.88	Meters	Program./major	250.00	100.00
291.102	CCN required	Program./major	250.00	100.00
291.110	Report of sale, merger, or consolidation	Program./major	250.00	100.00
291.111	Transfer of CCN	Program./major	250.00	100.00
301.38	Construction of levee project or other such improvement without submittal and approval of plans and specifications	Program./major	250.00	100.00
305.42	Application required (failure to submit an application for a permit or an amendment, modification, or renewal of a permit)	Program./major	2,500.00	1,000.00
305.125(2)	Standard permit conditions (failure to apply for a renewal prior to the expiration of the existing permit)	Program./major	2,500.00	1,000.00
305.125(9)	Standard permit conditions (failure to report a noncompliance that may endanger human health or the environment)	Program./major	2,500.00	1,000.00
305.125(11)	Standard permit conditions (failure to maintain records pursuant to Chapter 305)	Program./major	2,500.00	1,000.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
305.125(17)	Standard permit conditions (failure to provide monitoring results according to permit)	Program./major	2,500.00	1,000.00
312.142(a)	Failure of transporter to apply for registration	Program./major	2,500.00	1,000.00
312.144(a)	Failure to mark waste transport vehicle as required	Program./major	2,500.00	1,000.00
312.145(A)	Failure to maintain trip tickets	Program./major	2,500.00	1,000.00
312.145(b)(4)	Failure to submit annual report	Program./major	2,500.00	1,000.00
313.4	Water pollution abatement plan for regulated development	Program./major	2,500.00	1,000.00
321.36(b)(3)	Groundwater protection (failure to provide pond liner certification where required—built after 1989)	Program./major	2,500.00	1,000.00
321.195	Failure to notify TNRCC of discharge	Program./major	2,500.00	1,000.00
325.2(a)	Operation of WWTP without a certificate	Potential/major	5,000.00	2,500.00
330.4	Permit required	Program./major	2,500.00	1,000.00
330.7	Deed recording	Program./major	2,500.00	1,000.00
330.8	Notification requirements	Program./major	2,500.00	1,000.00
330.9	Financial assurance required	Program./major	2,500.00	1,000.00
330.113	Record-keeping requirements for solid waste land disposal sites	Program./major	2,500.00	1,000.00
330.115	Fire protection at solid waste landfill disposal sites	Potential/major	5,000.00	2,500.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
330.119	Site sign for solid waste land disposal sites	Program./major	2,500.00	1,000.00
330.122	Landfill markers and benchmark for solid waste land disposal sites	Program./major	2,500.00	1,000.00
330.131	Abandoned oil and water wells	Program./major	2,500.00	1,000.00
330.132	Compaction	Potential/minor	1,000.00	500.00
330.133(g)	Landfill cover (cover log)	Program./major	2,500.00	1,000.00
330.138	Failure to provide proper screening	Program./major	2,500.00	1,000.00
331.3	Injection prohibited unless authorized by an injection well permit	Program./major	2,500.00	1,000.00
334.5(b)	General prohibitions (depositing regulated substances into an unregistered UST)	Program./major	2,500.00	1,000.00
334.6	Construction notification	Program./major	2,500.00	1,000.00
334.7(a)(1)	Registration (failure to register USTs)	Program./major	2,500.00	1,000.00
334.10(b)(1)(A)	Reporting and record-keeping (failure to maintain records)	Program./major	2,500.00	1,000.00
334.49(a)(1)	Corrosion protection	Potential/major	5,000.00	2,500.00
334.50(b)(1)(A)	Release detection (for tanks)	Potential/major	5,000.00	2,500.00
334.50(b)(2)(A)	Release detection (for pressurized piping)	Potential/major	5,000.00	2,500.00
334.50(b)(2)(B)	Release detection (for suction piping)	Potential/major	5,000.00	2,500.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
334.51(b)(1)(A)	Spill and overfill prevention and control (failure to have tight-fill fitting, adapter, or similar device)	Potential/major	5,000.00	2,500.00
334.51(b)(2)(B)	Spill and overfill prevention and control (failure to have spill containment equipment)	Potential/major	5,000.00	2,500.00
334.51(b)(2)(C)	Spill and overfill prevention and control (failure to have overfill prevention equipment)	Potential/major	5,000.00	2,500.00
334.54(d)(1)(B)	Temporary removal from service (failure to permanently remove out-of-service USTs)	Potential/major	5,000.00	2,500.00
334.125	General prohibitions and requirements for aboveground storage tanks (ASTs) (depositing petroleum products into an unregistered AST)	Program./major	2,500.00	1,000.00
334.126	Installation notification for ASTs	Program./major	2,500.00	1,000.00
334.127(a)(1)	Registration of an AST	Program./major	2,500.00	1,000.00
334.401	Certificate of registration for UST contractor (unregistered UST contractor)	Potential/major	5,000.00	2,500.00
334.414	License for installers and on-site supervisors	Potential/major	5,000.00	2,500.00
334.453	General requirements and prohibitions	Potential/major	5,000.00	2,500.00
334.482	General prohibitions for petroleum substance waste (failure to register a petroleum substance waste treatment facility)	Program./major	2,500.00	1,000.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
335.2	Permit required for industrial solid waste and municipal hazardous waste	Program./major	2,500.00	1,000.00
335.5	Deed recordation of waste disposal	Program./major	2,500.00	1,000.00
335.6(a)	Notification requirements	Program./major	2,500.00	1,000.00
335.7	Bond or other financial assurance required	Program./major	2,500.00	1,000.00
335.9(a)(2)	Annual waste summary	Program./major	2,500.00	1,000.00
335.10(a)	Manifesting of waste	Program./major	2,500.00	1,000.00
335.13(b)	Monthly shipment summary	Program./major	2,500.00	1,000.00
335.43	Permit required for hazardous waste management	Program./major	2,500.00	1,000.00
335.63	EPA identification numbers	Program./major	2,500.00	1,000.00
335.67	Marking of containers	Program./major	2,500.00	1,000.00
335.68	Placarding of containers	Program./major	2,500.00	1,000.00
335.70	Record-keeping for hazardous waste generators	Program./major	2,500.00	1,000.00
335.71	Biennial reporting	Program./major	2,500.00	1,000.00
335.114	Record-keeping requirements for owners or operators (failure to submit annual report for TSD)	Program./major	2,500.00	1,000.00
335.513	Documentation required (failure to maintain waste classification documentation for at least 5 years)	Program./major	2,500.00	1,000.00
336.501(c), .601(b) and .701(a)	Possession of radioactive substances without a license	Program./major	2,500.00	1,000.00

Chapter	Violation	Matrix Position	Recom-mended Penalty (Majors)	Recom-mended Penalty (Minors)
336.1(d)	Disposal of byproduct material in unauthorized locations	Potential/major	5,000.00	2,500.00
336.304(a)	Failure to perform a radiation protection program audit	Potential/major	5,000.00	2,500.00
336.205(f)	Receipt records for byproduct material were not maintained by licensee	Program./major	2,500.00	1,000.00
336.403(a)	Failure to post notice to workers	Program./major	2,500.00	1,000.00
336.316	Failure to supply and require the use of individual monitoring devices	Potential/major	5,000.00	2,500.00
344.1	Installing without a license	Potential/major	1,250.00	625.00
344.1	Advertisement (without a license)	Program./major	625.00	250.00
344.73 and 344.75	Required backflow prevention (not installed)	Potential/major	1,250.00	625.00
TEXAS WATER CODE				
26.0301(a)	Failure of permittee to employ a properly certified operator	Potential/major	5,000.00	2,500.00
26.039	Failure to report spills	Program./major	2,500.00	1,000.00

OPEN RECORDS REQUEST

The Texas Attorney General has determined that information once public, subsequently may not be made confidential. Therefore, any information that has ever been open for public inspection (including Regional Office and Central Office files of cases under enforcement) must be released upon request. This would also include self-reporting data.

However, referral documents sent to the Central Office from the Regional Offices which have never been made public and which contain "advice, opinion, or recommendations" from agency employees may be withheld from public disclosure. Generally, facts and written observation of facts (even in a referral document) cannot be kept confidential. Names of informants (complainants) reporting violations of the law may be withheld from public disclosure.

This area of the law is extremely complex and subject to change. If an agency employee receives a written Open Records request, the employee must immediately refer (call and fax) this request to the Program Administrator of the Legal Support Division. The Open Records Act provides only 10 days from the date such a written request is received by the agency to request an Attorney General's opinion concerning whether the information may be kept confidential. If this request is not made within this period, the information is presumed to be public. Failure to release information which should have been released is a criminal offense.

Whenever the Region Office receives a request from an individual who is not a Commission employee to view file information regarding an entity which has been referred for enforcement action, the request should be referred to the Program Administrator of the Litigation Support Division. When notifying an individual that the request to review a file will be referred to the Central Office, the Region Office should offer to call the appropriate staff attorney, who will then contact the person making the request for file information.

TEMPORARY ORDERS, NON-IMMINENT EMERGENCY ORDERS AND EXECUTIVE DIRECTOR AUTHORIZATIONS

An effort should be made to process all Texas Water Code §26.0191 applications and requests in accordance with the procedures for Temporary Orders, which provide the fullest possible notice, opportunity for hearing, and review by the Commission. Following is the procedure for processing emergency and Temporary order and executive director authorizations. All such requests are processed by the Water Quality Division's Permits Section. If a entity requesting the action is under enforcement, the Permits Section will coordinate the request with the appropriate E.C.

I. Temporary Orders/Nonimminent Emergency Orders
   - A. 20-day (45-day for hazardous waste) published and mailed notice of Agenda;
   - B. If no protests, Order issued at Agenda; and
   - C. If protest or staff opposition, remand to SOAH.

II. Emergency Orders/Executive Director Authorizations
   - A. Legal Services determines if true imminent emergency; and
   - B. If true imminent emergency, follow process 1 or 2 below.
     1. Facilities permitted under the authority of Chapter 26 of the Texas Water Code:
        - a. Division Director forwards to executive director;
        - b. If executive director concurs, authorization issued;
        - c. Provide Tex. Reg. notice of initial Agenda to affirm, modify, or set aside (within 10 days);
        - d. If affirmed or modified, provide at least 10-day notice of subsequent Agenda (Tex. Reg. & mailed notice);
        - e. If no protests or staff opposition, Order issued at Agenda; and
        - f. If protest or staff opposition, remand to SOAH.
     2. Nonpermitted and/or hazardous waste facilities:
        - a. Division Director arranges with the executive director for emergency setting on Commission Agenda;
        - b. Quorum of Commission issues authorization at initial meeting (A minimum of two hours' Open Meetings Act notice);
        - c. Provide at least 10-day notice (45-day for hazardous waste) (Tex. Reg. and mailed notice) of Agenda to affirm, modify, or set aside;
        - d. If no protests or staff opposition, Order issued at Agenda; and
        - e. If protest or staff opposition, remand to SOAH.

ENFORCEMENT COORDINATION WITH EPA

The National Pollutant Discharge Elimination System (NPDES) program was established by the Clean Water Act of 1972 and was supported and/or reaffirmed by subsequent Congressional amendments and/or acts in 1977, 1984, and 1987. This program was originally managed by the EPA and Congress at the federal level. However, as the program matured, Congress mandated the EPA regional offices to delegate the NPDES program to those state governments located in their region that exhibited the ability to successfully manage the responsibilities of the program in the areas of permitting, enforcement, pretreatment, biomonitoring, and sludge disposal. The NPDES program affects approximately 3000 of the 3800 permitted facilities statewide.

The Commission and EPA have established an enforcement agreement to coordinate state and federal enforcement actions for facilities with NPDES permits. The agreement is updated and reviewed on a yearly basis. Among the provisions included in the enforcement agreement are the following joint actions between the two agencies:

- Notification and coordination on proposed formal enforcement actions
- Notification of scheduled enforcement conferences
- Copies of inspection reports
- Copies of issued enforcement documents
- Exchange of certain enforcement-related data (EPA quarterly noncompliance reports and pertinent statistics, TNRCC self-reporting data and enforcement log).
- Quarterly meetings to discuss enforcement issues and coordination of enforcement activities.

TNRCC

Supplemental Environmental Project (SEP) Information Sheet

What is a Supplemental Environmental Project? A Supplemental Environmental Project (SEP) is a project that prevents pollution, reduces the amount of pollution reaching the environment, enhances the quality of the environment, or contributes to public awareness of environmental matters. A respondent in an enforcement action may negotiate an agreement to perform an SEP in return for a reduction in the administrative penalty. If the Director of the Litigation Support Division approves the inclusion of a particular SEP in an agreed order, it will be presented to the Commission for consideration. Potential SEPs include such diverse projects as clean-ups of abandoned illegal dump sites; community household hazardous waste collections; and on-site pollution prevention projects that exceed regulatory requirements.

What is the Commission's approach to SEPs? The Executive Director issued a policy statement on October 26, 1995 on the discretionary use of SEPs in agreed orders. Among the key features of the policy are the following:

- 50% is generally the maximum approvable penalty reduction;
- a 1:1 ratio of the cost of the SEP to the amount of the penalty reduction is possible for projects that *directly* remediate environmental contamination or reduce pollutants entering the environment; projects that clearly benefit the respondent or that have *indirect* environmental benefits will generally be acceptable only at higher ratios;
- SEP approval cannot be considered for projects that are required to bring the respondent into compliance with the law;
- preference is given to SEPs that directly benefit the environment in the community where the violation occurred.

Why should I consider an SEP? The SEP program was developed as an innovative approach to resolving enforcement actions and improving environmental quality. For respondents who wish to contribute directly to the environmental improvement of their communities, the SEP policy provides an alternative to payment of the full amount of an administrative penalty.

What is the process for getting an SEP approved? If you are interested in negotiating an SEP, you should request a copy of the SEP Policy Statement, an SEP Proposal Guideline, and other materials from the SEP Coordinator, a Litigation Support Division attorney, or Enforcement Division staff. These documents will explain the process further and provide examples of SEPs that have been approved. After reviewing these materials, please contact the SEP Coordinator at (512) 239-3400 if you have further questions. You are encouraged to begin discussing SEP possibilities early in the enforcement process. However, work on a proposed SEP should not commence until the Commission has made its final determination.

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Environmental Enforcement Policy Statement

October 26, 1995

TO: TNRCC Employees

FROM: Dan Pearson
Executive Director

SUBJECT: Use of Supplemental Environmental Projects in Settlements

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This memorandum amends and replaces an earlier memorandum dated April 8, 1994, and presents the Executive Director's policy on the discretionary use of supplemental environmental projects ("SEPs") in agency agreed enforcement orders. A respondent's willingness to make voluntary contributions to such projects may be considered by the TNRCC staff in the settlement of enforcement actions. The specific project must be accepted by the Director of the Litigation Support Division under the guidelines described herein, before the agreed enforcement order is presented to the Commission for consideration.

This guideline does not create any rights on behalf of respondents. The approval of any particular proposed agreed order, SEP and related conditions is wholly subject to Commission's discretion.

Reduction of Penalty

The final administrative penalty amount (without considering the amount approved for any SEPs) must be sufficient (1) to have a deterrent effect on the individual violator and on other violators in similar positions, and (2) to the extent possible, recapture the economic benefits of noncompliance plus some appreciable portion of the gravity component of the penalty computation.

In general, an SEP will not justify more than a fifty percent reduction of the recommended administrative penalty and a reduction of less than fifty percent should be the norm. In addition, at least a $1.00 expenditure for an SEP will be required to justify a $1.00 reduction in penalties. Projects that directly remediate environmental contamination or reduce pollutants entering the environment may be acceptable at a 1:1 ratio. However, some projects may only be acceptable at a higher ratio. For example, projects that have indirect environmental benefits, or which clearly benefit the respondent, may only be acceptable at a rate of $3.00 or $4.00 expended for every $1.00 reduction in the penalty amount.

The general guidelines stated in the paragraph above are subject to the following exceptions:

(1) Governmental entities, meaning: a state agency or department; a district, authority, county, municipality, or other political subdivision of the state; or a public utility owned by a governmental entity, are eligible for 100% reductions in their penalties on the basis of SEP expenditures, as well as a ratio of a $1.00 reduction in penalty for every $1.00 spent on an accepted SEP; and

(2) Any respondent in an enforcement case is eligible to obtain a $1.00 reduction in penalty for every $1.00 spent on an SEP that is specifically determined by the Director of Litigation Support to result in a discernible beneficial change in the environment. This would include projects that go beyond any legal requirement and result in direct reductions of pollutants entering the environment or actual remediation of contaminated sites. Reductions in air emissions resulting from SEPs may not be used by a respondent for offsetting or netting purposes.

Situations In Which SEPs May Be Appropriate

The TNRCC Director of Litigation Support will consider submitting for Commission approval as part of an enforcement order a supplemental environmental project if (1) all violations are corrected through actions to ensure future compliance; (2) any pollution resulting from such violations has been remediated or will be remediated by the implementation of the terms of the agreed enforcement order; (3) both general and specific deterrence objectives are served; and (4) there is an appropriate relationship between the nature of the violation and the environmental benefits to be derived from the project or there is an overriding public and environmental good to be served by implementation of the project.

Projects Which May be Accepted

Preferred projects are those that will directly benefit the environment in the community where the alleged violation occurred. Projects that confer a direct benefit to the respondent are not preferred.

Acceptable projects are those which prevent pollution, reduce the amount of pollutants reaching the environment, enhance the quality of the environment, or contribute to public awareness of environmental matters. In addition, respondents must agree to publicly state that the project was undertaken as part of the settlement of an enforcement action brought by the state. Projects that are not acceptable are those that would be required to bring the violator into compliance with the law.

The following types of projects would be appropriate SEPs.

(1) Pollution prevention and/or reduction projects in which the amount of pollutants reaching the environment is decreased beyond any amount required to comply with environmental laws or other commitments;

(2) Environmental restoration projects that go beyond repair to the enhancement of the environment in the vicinity of the violating facility;

(3) Environmental projects that provide significant and meaningful technical assistance to other TNRCC regulated entities who are faced with economic and/or technological hardships;

(4) Projects that provide significant and meaningful environmental education and/or engineering assistance to members of the regulated community or the public;

(5) Projects to fund public works for a neighboring municipality or county that will benefit the environment in a way that is beyond ordinary compliance with the law; and

(6) Projects to clean up illegal municipal and industrial solid waste dumps.

Additional Requirements

1. **Compliance History of Respondent.** The history of compliance and the resources of the violator to complete the project it has committed to do must be considered. The respondent must report all environmental orders that have been issued and the compliance status of each. Repeat offenders are less appropriate for such favorable treatment. It may not be appropriate for respondents that are out of compliance with previous agency orders, in any agency program, to receive such favorable treatment.

2. **Performance.** Respondent must show that it and any intended recipient are ready, willing, and able to perform the proposed SEP before any such agreement is presented to the Commission. Respondent must also provide a written report to TNRCC to show that the SEP has been properly implemented, within a time period to be stated in the order. Any dollars that are not spent for the approved SEP within a duration to be stated in the order shall be forfeited to the general revenue fund of the State of Texas.

3. **Oversight/Tracking.** Additional staff resources will be required to monitor performance. Every effort should be made to ensure that the respondent provides sufficient and timely data to facilitate any required staff efforts. If third-party oversight is necessary, these costs must be borne by the respondent.

Deviation from this Policy

Consistent with the legislative intent and statutory provisions authorizing the use of SEPs, the Executive Director may deviate from the guidelines set forth above in extraordinary and limited circumstances where there is an unquestionable benefit to human health or the environment that outweighs the considerations resulting in the development of this policy. These extremely limited situations will be evaluated on a case by case basis by the Executive Director or a delegate and will only be considered where the direct beneficial impact of the project is exceptional and falls to the individuals, community or area potentially or actually affected by the violations.

Supplemental Environmental Project (SEP)
Proposal Guideline for Respondents

This proposal guideline is intended for the use of Respondents in TNRCC enforcement actions. In order for the Executive Director's staff to begin its evaluation of a proposed SEP, the information specified below is required. A respondent must be willing and able to provide detailed documentation to demonstrate all statements made in a proposal within one week of a follow up request from TNRCC staff. If you have questions regarding this guideline, please contact the SEP Coordinator in the Litigation Support Division at (512)239-3400.

1. **Enforcement Action.** Indicate the name of the entity and the location of the site associated with the enforcement action. Include the city and county as well as the applicable watershed and/or non-attainment area.

2. **Regulatory Information.** Provide a brief summary of all environmental enforcement orders, including compliance status, relating to the site identified above. For on-site projects, provide all TNRCC and EPA permit and account numbers related to this facility for all media.

3. **Name of Project.**

4. **Project Implementer.** Provide the name, mailing address, telephone number, and FAX number for the project director, organization conducting the project, and the person who will be responsible for submitting status reports (if different from the project director). *If the project will be conducted by a third party to the TNRCC enforcement action, the proposal should be accompanied by a letter or resolution from the appropriate board, governing body, or executive staff expressing the organization's commitment to the project if approved.*

5. **TNRCC Contact Person.** Provide the name, division and telephone number of any TNRCC staff person who has assisted with the development of this project.

6. **Geographical Area to Benefit from Project.** Identify cities, counties, and watersheds and/or non-attainment areas that would be affected by the project.

7. **Type of Project.** See the attached list on page 3.

8. **Project Description.** Describe the project including the following information: the need for the project; the availability of other similar services or projects in the area; and project implementation tasks such as technology, operation, or process changes.

9. **Expected Environmental Benefits.** Explain the expected environmental benefits of this project and ***quantify the environmental benefits*** to the extent practical.

   a. **For Pollution Prevention or Reduction Projects.** Quantify the amount of each pollutant that is expected to be reduced beyond the level required for environmental compliance. Specify the media (air, water, land) to be affected.

   b. **For all other types of projects.** Quantify the number of participants, programs offered, sites cleaned, types of contamination contained/removed, acres restored or affected, etc.

10. **Project Budget.** Provide projected initial and annual project costs with specific subcategories. Costs must be clearly and solely attributable to the proposed SEP.

11. Rate of Return Analysis. Provide an analysis of annual financial returns on the project.

12. Project Schedule. Provide a proposed schedule that addresses project implementation and the submittal of status reports to TNRCC. *Project implementation must not commence until after the Commission has approved the SEP in an agreed order*.

13. Accounting. Describe how SEP contributions would be accounted for *if* a third party is the proposed project implementer.

14. Reporting. Describe the information and documentation that would be included in project status reports. Project reports must provide sufficient information for TNRCC to monitor the project implementation status, to verify and to document the proper expenditure of SEP funds, and to evaluate the effectiveness and benefits of the SEP.

15. Prior Commitments and/or Regulatory Requirements.

a. Identify any applicable local, state or federal regulations that would require implementation of this project or any part of this project.

b. Identify any binding private commitments to implement this project or any part of this project.

c. Identify whether this project is part of:

1) a pollution prevention commitment identified in a plan developed pursuant to the state's Waste Reduction Policy Act (WRPA);

2) a commitment made under the Clean Texas program; or

3) the U.S. Environmental Protection Agency's Project XL or any other incentive or regulatory flexibility program.

d. Indicate the time frame for implementation of the project under any identified commitments.

SUPPLEMENTAL ENVIRONMENTAL PROJECT CATEGORIES

The Commission's SEP policy identifies the six types of projects listed below as appropriate SEPs. The inclusion of any particular proposed SEP and related conditions in an agreed order presented to the Commission is subject to the Executive Director's discretion. The Executive Director has delegated the authority to accept SEPs to the Director of the Litigation Support Division. *The final decision regarding the approval of any such agreed order rests wholly with the Commission*. For additional guidance on SEPs, please see the Executive Director's Environmental Enforcement Policy Statement dated October 26, 1995.

The following types of projects would be appropriate SEPs:

1. Pollution prevention and/or reduction projects;

2. Environmental restoration projects that go beyond repair to the enhancement of the environment in the vicinity of the violating facility;

3. Technical assistance to other TNRCC regulated entities who are faced with economic and/or technological hardships;

4. Environmental education and/or engineering assistance to members of the regulated community or the public;

5. Projects to fund public works for a neighboring municipality or county that will benefit the environment in a way that is beyond ordinary compliance with the law;

6. Projects to clean up illegal municipal and industrial solid waste dumps.

ENFORCEMENT DIVISION CASE PRIORITIZATION POLICY

Office of Compliance and Enforcement Acronyms:

IHW	Industrial and Hazardous Waste
MSW	Municipal Solid Waste
PST	Petroleum Storage Tank
PWS	Public Water Supply
WQ	Water Quality
AG	Agriculture
OC	Occupational Certification

Time frames: The team has proposed the following maximum time frames for initiation of enforcement action (note - if there is an emergency situation, the emergency will be dealt with immediately, by Emergency Response or other entity, if appropriate, prior to or concurrent with the initiation of an enforcement action.):

Priority 1 cases - within 30 days of Enforcement Screening Committee or 30 days from date of referral for Air cases.

Priority 2 cases - within 90 days of Enforcement Screening Committee or 90 days from date of referral for Air cases.

Priority 3 cases - within 120 days of Enforcement Screening Committee or 120 days from date of referral for Air cases.

Priority 4 cases - within 120 days of Enforcement Screening Committee or 120 days from date of referral for Air cases.

Note - initiation of enforcement action may be issuance of an Executive Director's Report, proposed order, referral to the Attorney General, Notice of Violation, or a letter of direction to the respondent. Also, time frames may be accelerated (or de-accelerated) by the Enforcement Division Director.

Disclaimer: For any violation or set of violations, unique circumstances may cause escalation to a higher (or lower) priority than that described below. Additionally, the examples listed for any one program area may be applicable in other program areas as well.

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Priority Number 1:

Situations in which exposure of contaminants to the air, water, or land is affecting human health and safety, or is causing a serious impact to the environment. Also, a situation in which exposure of contaminants to the air, water, or land will affect human health and safety, or will cause a serious impact to the environment unless immediate actions are taken.

EXAMPLES:

AIR - An instantaneous, ongoing, or flagrant release of material which causes an area to be evacuated, or causes persons in the area to seek immediate medical attention;

IHW, MSW, & PST - A drinking water supply has been affected, an explosion or fire has occurred that has resulted in impacts to human health or the environment, or extensive disruption to a sensitive ecosystem has occurred;

PWS - A widespread water-borne illness, or inorganic contamination of a drinking water well occurs;

WQ/AG - A fish kill occurs, or persons must seek medical attention due to exposure;

OC - Water Well Drillers/Pump Installers - Water well improperly constructed and located such that an individual(s) using the well must seek medical attention due to impact by high fecal coliform, surface runoff, naturally occurring undesirable water which has commingled with the fresh water zone, or other pollutants;

OC - On-site Sewage Facility Installers - On-site sewage facility system that is improperly constructed or placed close enough to a water well, surface drinking water supply, or recreational waters such that high fecal coliform or other contaminants in the water cause health problems for individual(s) using the water;

OC - Landscape Irrigators - Failure to install backflow prevention devices such that the failure has caused backflow problems for a domestic well or public water source and results in health problems;

OC - Water Operators - Falsifying sample results where contamination is found and persons consuming water require medical attention;

OC - Wastewater Operators - Operational failure due to incompetence resulting in surface or groundwater impact which causes persons who consume or contact the water to require medical attention.

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Priority Number 2:

Situations in which exposure of contaminants to the air, water or land is not known to have affected human health and safety or caused a serious impact to the environment but has the potential to cause such impacts, if left unaddressed.

EXAMPLES:

AIR - A facility operating without permit authorization or in chronic violation of permit conditions, exposing the public or environment to a condition of air pollution;

IHW & MSW - Contamination, known or recently discovered, is manageable or limited in extent at the time of the enforcement referral;

PST - A release of a regulated substance from a PST occurs near a drinking water supply;

PWS & OC - Water Operators - Failure of a public water supply or operator to sample in order to ensure that a person's drinking water is not contaminated with organisms or other contaminants;

WQ - A release of contaminants to surface waters jeopardizes the use designation;

AG - A confined animal feeding operation which does not have waste containment facilities necessary to prevent a discharge of wastewater pollutants during a rainfall event.

OC - Water Well Drillers/Pump Installers - Improper well construction or pump installation;
OC - On-site Sewage Facility Installers - Ongoing discharge of untreated sewage into drainage ditches resulting from poorly designed and constructed systems in soils with low permeability;

OC - Landscape Irrigator Program - Failure to install backflow prevention devices;

OC - Wastewater Operators - Failure to sample effluent.

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Priority Number 3:

Situations not otherwise of higher priority which involve violations of NON-CLERICAL STATUTORY or NON-CLERICAL regulatory requirements designed to assure, maintain, or improve human health and safety or environmental quality.

EXAMPLES:
AIR - Failure to monitor and conduct record keeping of numerous components/control devices in volatile organic compound (VOC) service in a nonattainment area;

IHW & MSW - Deviation from the statutes or rules authorizing management, treatment, storage, or disposal of regulated material, including permitting requirements and failure to comply with an agreed order or Agreed Judgement;

PST - Failure to upgrade a UST with required release detection equipment;

PWS & OC - Water Operators - Failure to flush water mains or inspect water tanks;

WQ & OC - Wastewater Operators - Failure to comply with permit requirements;

AG - Failure to have a wastewater pond marker to gauge the amount of wastewater;

OC - Water Well Drillers/Pump Installers - Minor construction violations and consumer complaints of incompetent drilling services;

OC - On-site Sewage Facility Installers - Authorized Agents (such as a river authority or county)

permitting substandard systems to be installed and nonlicensed installers constructing systems which fail to meet minimum health standards;

OC - Landscape Irrigators - Failure to obtain local permits and consumer complaints.

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Priority Number 4:
Situations not otherwise of higher priority which involve violations of CLERICAL STATUTORY or CLERICAL regulatory requirements designed to assure, maintain, or improve human health and safety or environmental quality.
EXAMPLES:

AIR - Repeated tagging or record keeping violations, or permit violations resulting from engineering calculation mistakes which do not affect control requirements or impact analysis;

IHW - Repeated failure to maintain or submit adequate documentation of waste notification, management, or disposal activities;

MSW - Failure to submit quarterly or annual reports in a timely manner;

PST - Failure to submit notification prior to performing UST construction activities;

PWS & OC - Water Operators - Failure to maintain sample documentation, such as chlorine residual testing;

WQ & OC - Wastewater Operators - Failure to submit self-reported data, maintain records and logs, or provide notification of a noncompliance;

AG - Failure to submit certification documenting completion and operation of a facility;

OC - Water Well Drillers/Pump Installers - Failure to display license numbers on rigs and falsification of license renewals;

OC - On-site Sewage Facility Installers - Failing to renew installer license on time, but otherwise meeting minimum standards on the system installed;

OC - Landscape Irrigators - Failure to mark vehicles with license number and obtain seal.

PCW Instructions

Table of Contents

Spreadsheet Basics

The PCW is based on a Quattro Pro spreadsheet. A spreadsheet resembles a table or grid, and is commonly used to perform repetitive numerical calculations, especially those involving money.

Quattro Pro files, including the PCW, can be recognized by their wb2 filename extension. A Quattro Pro file is not in the same format as a Word Perfect file. Just as you would use Word Perfect to work with a Word Perfect file, you use Quattro Pro to work with a Quattro Pro file (including the PCW).

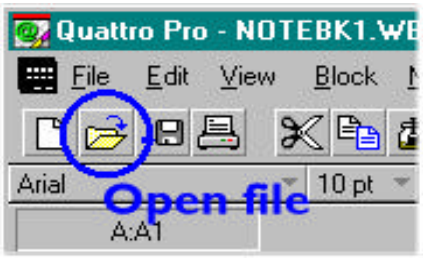
You can e-mail a Quattro Pro file as an attachment, just as you would a Word Perfect file. When you receive an e-mailed PCW, just save the attached PCW to your hard drive. Then, open the PCW in Quattro Pro.

Like a Word Perfect file, you must save the PCW to your hard drive before using it. It doesn't matter which directory you save it into--you can save it to the WordPerfect directory where your other enforcement documents are kept, if that is most convenient. Just use Quattro Pro to open it.

You need to know very little about Quattro Pro in order to use the PCW. If you're interested, more general information on using Quattro Pro is available in *Using Novell Perfect Office 3*.

Saving and Opening the PCW File

Figure 3
Open file button



Depending on how much memory your computer has, it may be a good idea to close other software you are using, especially WordPerfect and the enforcement database, which use a lot of memory. Start Quattro Pro by clicking on the green @ icon in the DAD bar. Open the PCW on the H drive by clicking on the yellow folder icon (Open File), the same way as in WordPerfect. The blank PCW will be named pcw_50.wb2 or pcw_10.wb2 and will be kept in a subdirectory (called PCW) of the Division SOP (on the network, H drive). The full path is H:\ENFORCE\DIVSOP\PCW

Save the PCW to your hard drive under a different name (such as the name of the case), and then you can start using it. It is preferable to keep the wb2 filename extension. For example, you could open pcw_10.wb2 and save it to your hard drive as abc_inc.wb2

Note
Two versions of the PCW are available:

pcw_50.wb2	holds up to 50 violations
pcw_10.wb2	holds up to 10 violations

Since the 50-violation PCW is rather large, use the 10-violation version if you have 10 or fewer violations.

It is recommended that you use the H drive network copy. Each time you start a PCW for a new case, open the unmodified PCW on the network server. The network copy is always going to be the most current version. It is also “read-only” to prevent it from being deleted or overwritten.

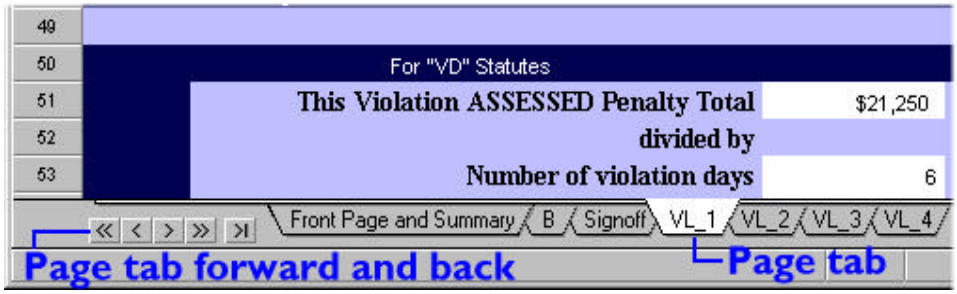
Pages

A Quattro Pro spreadsheet file, including the PCW, consists of separate *pages*. These pages are in the *same* Quattro Pro file, but they appear as *separate* spreadsheet tables. Each page can hold separate data.

Each page has its own name. The pages' names are shown on the *page tabs* along the bottom edge of the spreadsheet. For example, in the PCW, the violations are described on pages *VL_1*, *VL_2*, *VL_3* and so forth, for a total of 50 violation pages.

Go to another page by simply clicking on the desired page tab. If the desired page tab is not visible on the screen, use the forward and back buttons (see *Figure 2*).

Figure 4
To go to another page, click on the page tabs or the forward/back buttons



Data Entry Protection

To prevent accidental erasure of data, all of the PCW is *protected*, except for the few cells where you enter information. If you attempt to edit or enter data into a protected cell, a warning message will pop up. The message says "Protected cell or block." Simply click on the OK button (in the message box) to return to editing or entering data.

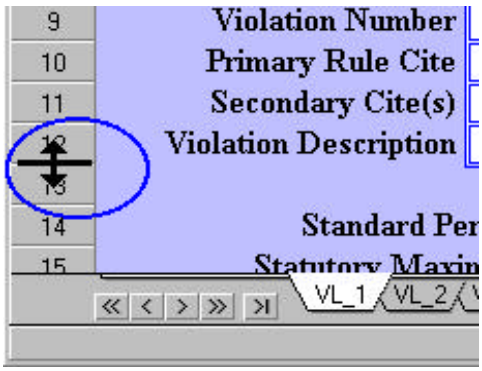
Recalculation

The PCW automatically recalculates all intermediate and final results whenever you enter new data. This means that you cannot assume that the PCW's results are correct until you have finished entering in all of the violations and adjustments.

Adjusting Row Height

If needed, you can easily make a row taller or shorter. Position the cursor over the row labels along the left margin of the PCW until a double-sided arrow (pointing up and down) appears (see *Figure 3*).

Figure 5
Row height adjustment. The cursor turns into a double-sided arrow.



While the double arrow is still being displayed, depress the left mouse button and hold it down while you move the mouse up or

down. Release the mouse when the row is the desired height.

Moving Around the PCW

These keyboard commands will work with any Quattro Pro spreadsheet, including the PCW.

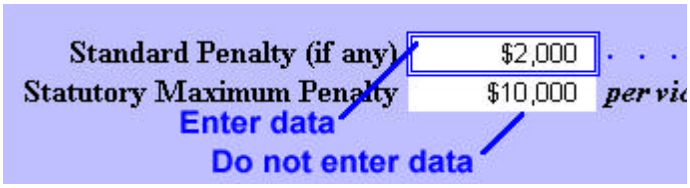
To Go To. . .	Press
Top-left of current page	Home key
Beginning of PCW	Ctrl+Home
Go to page X	Click on the page tab of Page X

Entering and Editing Data

Restricted Entry

The rectangles where data is entered and displayed are called *cells*. Enter data only in the white cells with a *line* border (usually this will be a double line). All other cells are protected (locked out) to prevent entry in the wrong cells.

Figure 6
Enter data only in white cells with a line border (usually double line)



If you attempt to edit or enter data into a protected cell, a warning message will pop up. Simply click on OK.

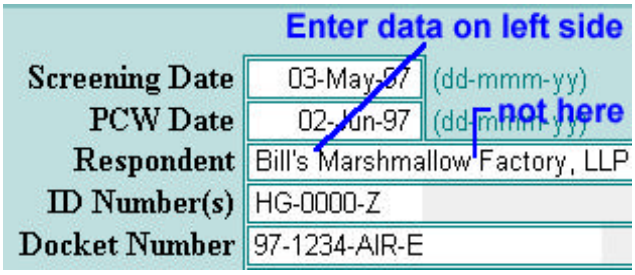
Cell Appearance	Enter Data?	Note
White, with line border	**Yes**	**These cells can have data entered into them or edited**
White cells with no border	**No**	**These cells simply display results that the spreadsheet calculates for you**
Colored areas	**No**	**The rest of the PCW consists of labels and non-changing information**

Entering Data into a Cell

To enter data into a cell,

- position the cursor over the cell;
- left-click the mouse;
- type in the appropriate entry; and
- press Enter

Figure 7
For wide cells, begin data entry on the left side.



Some cells are extra wide to accommodate long names (e.g., "Respondent" on the Front Page, "Violation Description" on the violation pages). In such cases, always start entering by clicking in the left-most part of the cell (see *Figure 5*).

Messages

For some items, an error message in red text will appear if you make an improper entry. For example, if a violation page has a standard penalty amount filled in, and you then enter something into the harm/release matrix, a message will appear that says "Error--no matrix percentages with a standard penalty." In this event, you would delete either the matrix entry or the standard penalty, whichever does not belong.

Format of Data

> **Note**
> If the PCW appears to be displaying an incorrect number, or no number, the most likely problem is an entry that was made in an incorrect format.

Some data must be entered in a specific format in order for the PCW to interpret it correctly. Where feasible, such requirements are noted on the PCW next to the respective data entry field. Any such requirements are also described in the step by step instructions below. The general rules are as follows:

Dollar Amounts

Anywhere dollar amounts are called for, enter the number only. Do *not* use commas, dollar signs, decimal points or cents. Quattro Pro will add the dollar sign, etc. See the following table.

	$7,500.00	$1,000.00
Correct	**7500**	**1000**
Incorrect	**7,500**	**1,000.00**
	$7,500	**1,000**

Percentages

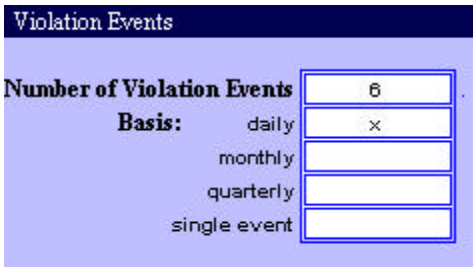
Enter the number only. Do *not* use a percent sign, decimal fractions or decimal points.

	10%	25%
Correct	10	25
Incorrect	10%	25%
	0.10	0.25

Check Boxes

Several parts of the PCW use a list, from which you are supposed to choose *one* (and only one) of the available options. You choose the option by entering a small **x** in the appropriate box. See *Figure 6*.

Figure 8
Example of how to enter a small **x** in the violation events Basis column



Editing Data in a Cell

Often, you will need to make some changes or corrections to what has been entered into a cell. It is not necessary to delete the cell's contents in order to make changes to it.

To Edit Existing Data in a Cell

1. position the cursor over the cell and left-click the mouse twice in quick succession ("double click"). If it is a wide cell, such as Violation Description, be sure to double click on the far left of the cell

as described above.

2. Use any of the normal editing keys to move around in the cell (delete, backspace, arrows).

3. Add in new text or numbers, or remove text or numbers

4. When you are finished, press the Enter key

Note To delete a cell's contents, click *once* on the cell, then press Delete.

Printing the PCW

The PCW is a large, multi-page spreadsheet. For the typical enforcement case, most of the violation pages (VL_1, VL_2, etc.) will be unused. Therefore it is not desirable to print the complete PCW. Typically, you will need to print only certain parts of the PCW; mainly the *PCW Summary* page and the violation *summaries*, and perhaps the *Signoff* page. If you have only a few violations, it may be preferable to just print out the violation pages (VL_1, VL_2, etc.) instead of the violation summary report.

Violation Summary

The "violation summary" is not a separate page. It is a printout that takes the information you have entered on the violation pages and summarizes it in a more compact form suitable for printing.

If you have only a few violations, you may want to print the violation pages themselves instead of the summary printout. Printing the violation pages is described below

General Printing Guidelines

- Print only the pages that you need.

- To avoid wasting paper, use Quattro Pro's print preview command to see what the printout will look like before printing.

Print Macros

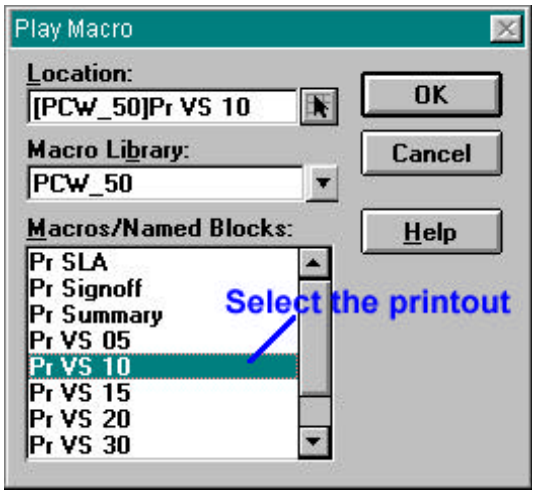
The PCW has several *macros* built in that will produce various pre-set types of printouts. A macro is a simple, short program that automates a task that otherwise would have to be performed manually. These macros prevent the user from having to set up and format the printouts. The macros are very easy to use, and are explained below.

Printing Example

The following steps explain how to print a violation summary for ten violations.

1. On the Quattro Pro menu, choose Tools, Macro, Play (or, press the **Alt** and **F2** keys at the same time)

Figure 9
Select the printout you want and click on OK.



2. In the box that pops up (see *Figure 7*), you will see a list of available printouts. Select the desired printout (in this example, **Pr VS 10**, which stands for "print the violation summary for 10 violations").

3. Press **OK**. This will bring up the print preview screen. If the preview looks OK, then click on the print icon at the top of the screen to print it.

All other printouts are done exactly the same way, except that you select the appropriate printout from the *Play Macro* list as described in step 2 above.

Following is an explanation of the printout abbreviations in the *Play Macro* list.

If you select this abbreviation from *Play Macro* List . . .	**The resulting action is to . . .**
Pr VS 05	print a violation summary with up to 5 violations
Pr VS 10	print a violation summary with up to 10 violations
Pr VS 15	print a violation summary with up to 15 violations
Pr VS xx	print a violation summary with up to *xx* violations
Pr Summary	print the *PCW Summary* page
Pr Signoff	print the *Signoff* page
Pr SLA	print the *Statutory Limit Adjustment* page

Printing Instructions for the Violation Pages

Printing the violation pages (VL_1, VL_2, etc.) is discouraged since it could use a lot of paper. Printing a violation page requires a page and a half of paper. Therefore, it is preferable to print a violation summary report, as described above.

If, however, you do want to print a violation page, the process is easy:

1. Go to the violation page you want to print.

2. *Select* the part of the page to print. Normally, this will be the *colored* part of the page, where the data entry, labels and calculations are.

NOTE
Select means to highlight the cells, using the mouse. On the violation pages, an easy way to do this is to click on the bottom right corner of the colored part of the violation page. Then, press the Shift and Home keys at the same time.

3. Click on the Print icon (or select File, Print in the menu).The Spreadsheet Print box will appear. Click on the Print button.

4. Repeat the above steps for each violation page you want to print.

General Procedure for Using the PCW

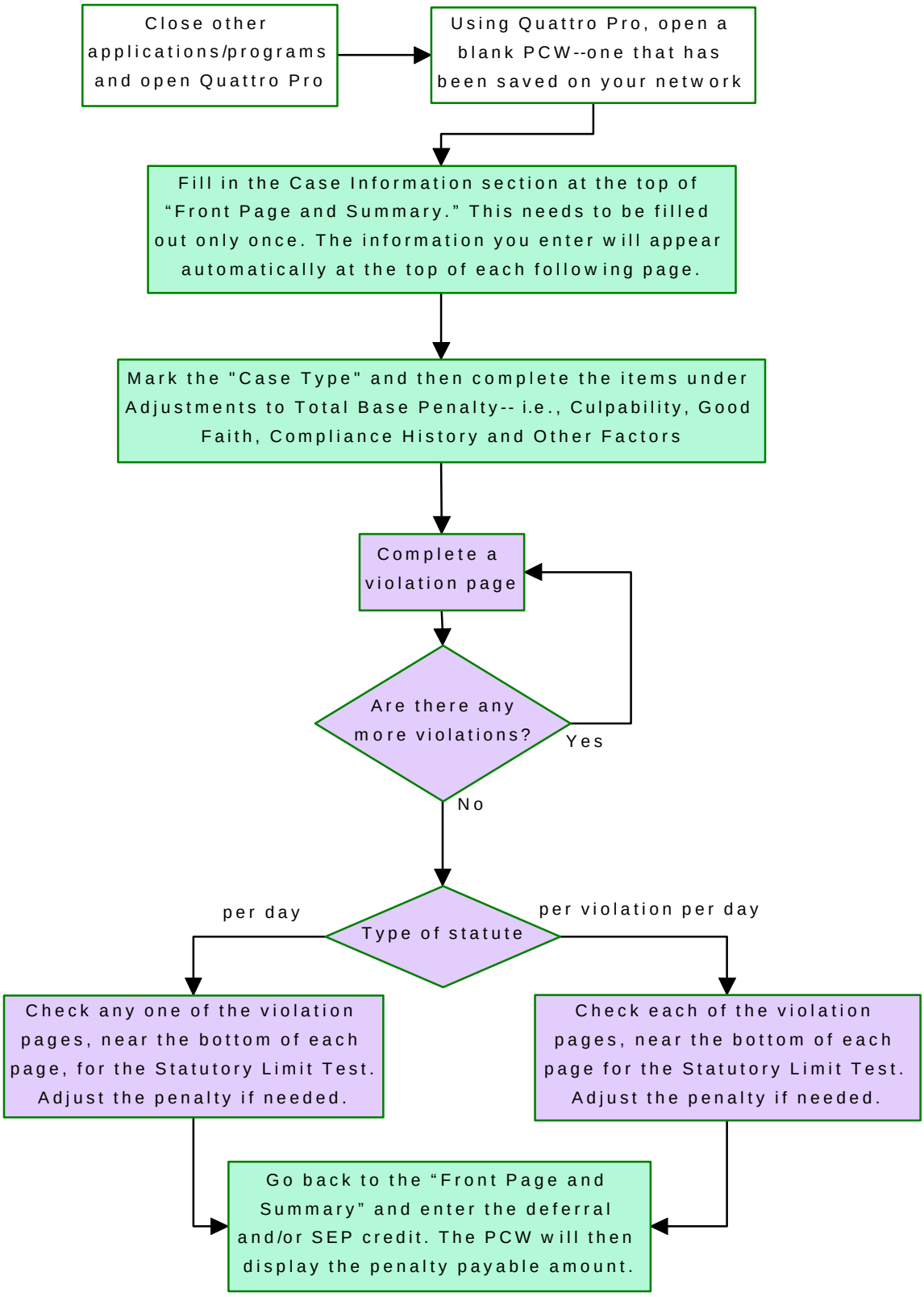
The following steps show the general order in which the different parts of the form should be completed. Also see the equivalent flow chart on the next page.

Note

If the respondent qualifies for the no-penalty policy and will be given a zero penalty, it will not be necessary to do a PCW.

Step	Action
1	Close other applications/programs and open Quattro Pro
2	Using Quattro Pro, open a blank PCW--one that has been saved on your network drive or hard drive.
3	Fill in the *Case Information* section at the top of the first page (the page tab that says *Front Page and Summary*). This needs to be filled out only once. The information you enter will appear automatically at the top of each following page.
4	Indicate Case Type just below the *Case Information* section. Enter a small **x** in the appropriate box.
5	Still on the *Front Page*, complete the items under *Adjustments to Total Base Penalty*--i.e., Culpability, Good Faith, Compliance History and Other Factors.
6	Go to the violation pages (purple) and complete one violation page for each violation.
7	Go back to each of the violation pages, and check near the bottom of each page for the *Statutory Limit Test*. Adjust the penalty if needed.

Step	Action
8	The assessed and payable penalty amounts will be displayed on the *Front Page*.


Close other applications/programs and open Quattro Pro
Using Quattro Pro, open a blank PCW--one that has been saved on your network
Fill in the Case Information section at the top of "Front Page and Summary." This needs to be filled out only once. The information you enter will appear automatically at the top of each following page.
Mark the "Case Type" and then complete the items under Adjustments to Total Base Penalty-- i.e., Culpability, Good Faith, Compliance History and Other Factors
Complete a violation page
Are there any more violations?
Yes
No
Type of statute
per day
per violation per day
Check any one of the violation pages, near the bottom of each page, for the Statutory Limit Test. Adjust the penalty if needed.
Check each of the violation pages, near the bottom of each page for the Statutory Limit Test. Adjust the penalty if needed.
Go back to the "Front Page and Summary" and enter the deferral and/or SEP credit. The PCW will then display the penalty payable amount.

Starting off with the *Front Page*

Begin filling out the PCW on the *Front Page and Summary*, where the general information about the case is entered.

Case Information (Front Page)

Case Information provides the basic facts about the case: who the Respondent is, who the Enforcement Coordinator is, identification numbers, etc. *Case Information* data entry is located at the top of the Front Page. Except for dates, none of the data in *Case Information* is required to be entered in a particular format.

NOTE
Enter the case information only **once**, at the top of the Front Page. It is copied automatically to all of the following pages.

Screening Date

Enter the screening date in either of the following formats:

Date Entry Format	Correct Examples	Incorrect Examples
dd-mmm-yy	23-Apr-97	23/Apr/97 23Apr97

mm/dd/yy	04/23/97 4/23/97	Apr/23/97

.

PCW Date

Enter the current date in the same format as the screening date.

Respondent

Enter the full name of the respondent, as it would appear on the Executive Summary or agreed order.

ID Number(s)

Enter any applicable numbers for your media or program area which help identify the facility or activity under enforcement. ID numbers may include permit numbers, account numbers, certification numbers, etc.

Docket Number

Enter the case's docket number, if known. If it isn't known at the time you start the PCW, it can be added later.

Enf. Coordinator

Enter the name of the person who is developing the enforcement case (usually, yourself). It would be helpful to also add your phone, fax and mail code.

Section/Region

Enter your section name or region number--for example, Waste, Air, Region 12

Type of Order

Enter "1660" or "Findings."

Case Priority

Enter the number 1, 2, 3 or 4, corresponding to the case priority as assigned at screening. Enter only the number.

Qualifies for no-penalty policy?

Enter Yes or No. (If Yes, and the respondent will be given a zero penalty, it will not be necessary to do a PCW.)

Indicate Case Type

From the list of media/programs and statutes, choose the **one** that the violations in this enforcement action were cited under. Enter a *small* **x** in the box to the left of that item. *Make sure only one box is marked*.

NOTE
A single PCW can handle only one statute or program at a time

Adjustments to Total Base Penalty

The adjustment factors are applied to the total base penalty (the total from all of the violations). The adjustment factors are: Culpability; Economic benefit; Good faith effort to comply; and Compliance history.

NOTE
The penalty amounts on the Front Page will not display correct figures at this point, since the violation pages have not yet been completed.

Total Base Penalty Fwd

This amount is calculated by the spreadsheet. You do not need to enter this figure. It is the sum of the total base penalty for all violations in the PCW, *without* any enhancements for economic benefit, culpability, etc.

Culpability (enhancement)

Choose the culpability criteria the respondent meets, and enter a *small* **x** in the box to the right of that item. *Make sure only one box is marked.*

Economic Benefit (enhancement)

This amount is calculated by the spreadsheet. You do not need to enter this figure. It is the sum of the economic benefit *enhancements* (in dollars) for all violations in the PCW.

Good Faith Effort to Comply (reduction)

Review the policy's good faith matrix and determine the appropriate Timing and Quality factors. Enter a small **x** in the appropriate box. If none of the good faith criteria apply (i.e., there is no good faith, no action, or the actions were taken after the EDPR), enter a small **x** in the box labeled "None of the above." This will result in a zero amount of good faith credit.

Compliance History (enhancement)

1. Review the compliance history matrix and determine the appropriate number of times through enforcement.

2. Enter a small **x** in the appropriate box.

Other Factors That Justice May Require (reduction or enhancement)

Enter a brief description of any adjustments to be made in this category.

Enter Adjustment Percentage (+/-)

Enter the *Percent* number corresponding to the adjustment to be made. **The *Percent* number must be entered as a simple number.** For example, 50% must be entered as **50** with no decimal point, comma, percent sign, etc. A negative adjustment (which will reduce the penalty) is entered as a negative number. For example, enter a 50% reduction as **–50**

Note
The PCW multiplies this adjustment percentage by the total penalty *after* the other adjustments (good faith, etc.) have been made.

Assessed Penalty Total

This amount is calculated by the spreadsheet. You do not need to enter this figure.

Assessed Penalty Total, adjusted for statutory limit (leave blank if N/A)

If you had to adjust the penalty due to a statutory limit exceedance, enter the revised total assessed penalty in this blank; **otherwise, leave it blank.**

The Violation Pages

Overview

Grouped Violations
A violation group is a set of related violations which have separate rule citations, but are being considered together for penalty purposes.

The violation pages are light purple in color, and are named VL_1, VL_2, and so forth. Complete one violation page for each violation (or one per *group* of violations). Complete all of the violation pages needed for your enforcement action before evaluating the total enforcement action penalty or possible statutory exceedances.

The case information you entered previously appears at the top of each violation page, in the light green area. You do not need to re-enter it; in fact, you cannot re-enter it, since the cells are protected. If you notice that the case information needs changing, go back to the top of the Front Page and make the necessary changes.

Violation Number

Enter a number or letter to designate this specific violation. The violation number is not automatically entered, and is **not** the same as the violation page-name (VL_1, VL_2...). The violation number is completely arbitrary and can be any number or letter, or combination, in any format. This entry has no effect on the PCW's calculations. It is provided solely as a way to help relate the violation as described on the PCW to the violation as described in other enforcement documents.

Suggestion
Use the same number or letter as in the Agreed Order, so that it will be easy to refer back and forth between the AO and the PCW.

Primary Rule Cite

Enter a concise citation for the *primary* rule or other document violated, including (as appropriate) TAC section and paragraph, permit number and provision, or agreed order number and provision.

Primary and Secondary Cites
If violations are *grouped*, you may have several citations to list. Enter the primary cite and then the secondary cite(s) as applicable.

Secondary Cite(s)

Enter a concise citation for the *secondary* citation(s), if any.

Violation Description

Enter a concise description of the violation. It should clearly describe what the respondent did or failed to do, and how this relates to the requirement of the rule or permit. For example, the following entry would be sufficient: "HR-III Unit exceeded the SO_2 emission limit of 4 lbs SO_2 per ton of acid produced."

Standard Penalty (if any)

Enter the standard penalty, in dollars, for this type of violation, as listed in Appendix 3 of the penalty policy or on the *Std Penalties* page of the PCW. **Enter the dollar amount in plain numeric format, with no commas, dollar sign, decimal point or decimal fraction.** *If there is no standard penalty, leave this space blank.*

fyi

Statutory Maximum Penalty

Base Penalty

These amounts are calculated by the spreadsheet. You do not need to enter these figures.

The statutory maximum penalty is taken from the Case Type selection on the Front Page. If there is a standard penalty, the Base Penalty is the standard penalty. If there is not a standard penalty, the base penalty is the same as the statutory maximum penalty.

E&HH Matrix and Programmatic Matrix

These matrices should be used only if there is no standard penalty for the violation. If the violation has a standard penalty, these matrices should be left blank.

When used, only *one* matrix should be used. A violation will be evaluated under *either* the E&HH Matrix or the Programmatic Matrix. Review the penalty policy and determine which matrix should be used for the violation you are working on.

You will see an error message in red text if these rules are not observed. To get rid of the error message, remove the improper entry(s).

Environmental and Human Health Matrix

If you determine that the E&HH Matrix is applicable, review the matrix and determine the appropriate Harm and Release factors (actual, potential; major, moderate or minor). Enter a small **x** into the matrix, corresponding to the appropriate Release and Harm factors.

Programmatic Matrix

If you determine that the Programmatic Matrix is applicable, review the matrix and determine the appropriate factor (falsification, major, moderate or minor). Enter a small **x** into the matrix, corresponding to the appropriate programmatic factor.

fyi

Matrix Adjustment

Base Penalty Subtotal

These amounts are calculated by the spreadsheet. You do not need to enter these figures.

The *Matrix Adjustment* is an intermediate number showing the amount by which the Base Penalty (statutory maximum penalty) is being reduced. It is in parentheses to indicate that it is a negative amount.

The *Base Penalty Subtotal* is a calculated number derived from adding the Base Penalty and the Matrix Adjustment.

Enter Number of Violation Events

Enter the proper number of events. Enter only numerals; do not enter additional words or punctuation. For example, if there are six events, enter only the numeral **6**

Basis

From the list (daily, monthly, quarterly, single event), choose the *one* that is appropriate for this violation, according to the penalty policy. Enter a *small* **x** in the box to the left of that item. *Make sure only one box is marked.*

fyi

This Violation Base Penalty

This amount is calculated by the spreadsheet. You do not need to enter this figure.

The *Violation Base Penalty* is a calculated number. It is the Base Penalty Subtotal times the number of violation events. It is added to the corresponding amounts from the other violation pages to yield the *Total Base Penalty Fwd* on the Front Page. The adjustment factors (culpability, good faith, etc.) are then applied to the *Total Base Penalty Fwd* on the Front Page.

Economic Benefit (EB) for this violation

First, determine the estimated economic benefit *amount* for the current violation. EB must be evaluated and entered for *each* violation, even if the resulting enhancement is zero. The method for calculating economic benefit is described in a separate procedure.

Note

It is important to note the distinction between the EB *amount* and the EB *enhancement*.

The ***EB amount*** is the calculated estimate of how much economic benefit the respondent gained from the violation. This amount is derived according to the criteria listed in the penalty policy and in supporting procedures.

The ***EB enhancement*** is the amount by which the *penalty is increased* as a result of the policy's formula that considers the EB amount and the violator's culpability.

The EB enhancement may range from zero up to 50% of the violation's base penalty, but cannot exceed the EB amount (the PCW makes this adjustment automatically, if needed).

Estimated economic benefit

Enter the dollar amount of the estimated economic benefit for the current violation. **Enter the dollar amount in plain numeric format, with no commas, dollar signs, decimal points or decimal fractions.** See the following table.

EB Amount Entry Format

EB Amount	Enter . . .
$26,000	26000
$14,000	14000
$0	0

Statutory Limit Test

This is a somewhat complicated (but very important) subject, so it is necessary to describe it in some detail.

Purpose of the Statutory Limit Test

The statutory limit test helps determine whether the *assessed* penalty exceeds the maximum allowed by the respective enabling statute. The various statutes governing TNRCC enforcement have maximum amounts ranging from $500 to $10,000. The key difference between them, however, is whether the limit is based on a *per-day* amount, or a *per-violation per day* amount. The statutes and their respective limits are listed in the penalty policy and on the PCW Front Page.

Interpreting Statutory Limits

Consider two statutes, one governing Waste and the other, Air.

Program	Penalty Limit	Per...
Waste	$10,000	per day
Air	$10,000	per violation per day

For **Waste**, the assessed penalty amount assignable to all of the violations that occur on a particular day cannot exceed $10,000, no matter how many violations contributed to that amount. Thus it is possible to have ten serious violations occurring on June 1, 1997, and the total penalty will be capped at $10,000. If the same ten violations each occurred on *separate* days, say June 1 through 10, the penalty could be as much as $100,000.

For **Air**, all ten violations could occur on the same day, and each could have $10,000 assessed, for a total of $100,000.

This means that, other things being equal, it is much easier to exceed the limit under a per day type of statute than under a per violation per day statute. The PCW will do a conservative (worst-case) test for either type of statute. As a practical matter, the media and programs with a per day statute will more often find themselves having to make adjustments to ensure that the limit is not exceeded.

The per day statutes are more difficult to work with for another reason: the PCW (like most enforcement

documentation) is organized according to the *violations* that have been cited, not by the *days* on which those violations occurred. With a per day statute, violations cannot be evaluated separately. All of the violations must be considered together to see whether any of them occurred on the same day. If they did, the penalty amounts assignable to that *day* must be added together and compared to the limit.

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How the PCW Does the Statutory Limit Test

The PCW starts with the "Assessed Penalty Total" amount on the Front Page. This amount is then divided up among the violations by prorating each violation's "This Violation Base Penalty" to the "Total Base Penalty Fwd" on the Front Page. This yields the figure "This Violation ASSESSED Penalty Total" which is displayed on each violation page. This figure is then divided by the number of violation days, resulting in the assessed penalty for this violation, per day of violation.

For **per violation per day** statutes, the PCW's result, "Equals ---- per day," can be directly compared to the statutory limit.

For **per day** statutes, the PCW performs an additional step. The PCW adds the "Equals ---- per day" amount to the corresponding amounts on the other violation pages. For simplicity's sake, the PCW assumes that violations overlap and *occur on the same day*. This is obviously a worst case scenario, and will almost always overestimate the actual per day penalty.

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How the PCW Calculates the Per-Day Amount (for D statutes)

Assume that the limit is $1,000/day, and that an enforcement action has the following two violations:

Violation 1 ($2,000 total; $500/day)

03-Apr $500	07-Apr $500	11-Apr $500	12-Apr $500

Violation 2 ($3,000 total; $750/day)

27-Apr $750	2-May $750	22-May $750	25-May $750

In reality, the limit is not exceeded, because the highest penalty on any single day is $750. However, at this point, the PCW has no information about when the violations occurred, so it assumes that the days *overlap*. The per-day estimate is thus $500 + $750 = $1,250. This is done for the sake of simplicity--otherwise you would always have to enter the dates of occurrence for all violations, regardless of whether a statutory exceedance is likely, and the PCW would be more complicated.

Number of Violation Days

The PCW makes another simplifying assumption by deriving the days of violation from the number of events and the their basis (daily, monthly, quarterly). A violation with three events on a monthly basis would be considered to have 90 days of violation.

When to Look at the Test Results

Look at the Statutory Limit Test results

- *after* all of the violations in the enforcement action have been entered;

- *after* the adjustment factors on the Front Page (*Adjustments to Total Base Penalty*) have been completed; and

- *before* the Penalty Summary section on the Front Page is done (deferrals and SEP).

In other words, the Statutory Limit Test is applied to the proposed *assessed* penalty amount, *before* the payable amount is derived by subtracting any deferral or SEP. The *assessed* amount is subject to the statutory limit, not the payable amount. Therefore, skip over the Statutory Limit Test section when you are doing the violation pages, and return to it after you have completed the violation pages and the adjustment factors on the Front Page.

What to Do With the Test Results

The per-day amounts are calculated by the spreadsheet. You do not need to enter these figures. Note the status message (in red text) and take action accordingly, as described below.

Interpreting the Status Messages

There are two status messages. It is very important to understand what each one means (and doesn't mean), and what should be done in response.

Message	Interpretation of Message
Does not exceed statutory limit. No further analysis needed.	**For per-day statutes:** For this type of statute, all of the violations will display the same message, because the PCW assumes that they all occur on the same day. You need to check only one page. If the message is "Does not exceed...," there is no problem with the statutory limit. Proceed with determining the payable penalty by deducting SEP, deferral, etc. **For per-violation per-day statutes:** For this type of statute, each violation is considered individually. Check *each* violation page to make sure *none* of them has a "Greater than..." message.
Greater than (or "possibly exceeds") statutory limit. Additional analysis needed.	**For per-day statutes:** For this type of statute, all of the violations will display the same message, because the PCW assumes that they all occur on the same day. You need to check only one page. If the message is "Greater than limit...," on any page, it is possible, though not certain, that the limit has been exceeded. Confirm the result with a more detailed analysis (described below), and then adjust the penalty down to the limit on each day that exceeds the limit.

Message	Interpretation of Message
	For per-violation per-day statutes: For this type of statute, each violation is considered individually. Identify *each* violation page that has a "Greater than..." message. For those pages, the limit has in all likelihood been exceeded. Confirm the result with a more detailed analysis of that violation, and then adjust the penalty down to the limit on each *day* of that violation on which the limit is exceeded.

The key point to remember is that the PCW uses a conservative (worst-case) methodology: If it says "Does not exceed...," you can be confident that there is no problem. If it says "Greater than statutory limit..." there may not actually be a problem, but you will have to do some additional work to check it.

How to Do the More Detailed Analysis

When the PCW gives you the "Greater than statutory limit..." message, verify the penalty and limit as follows:

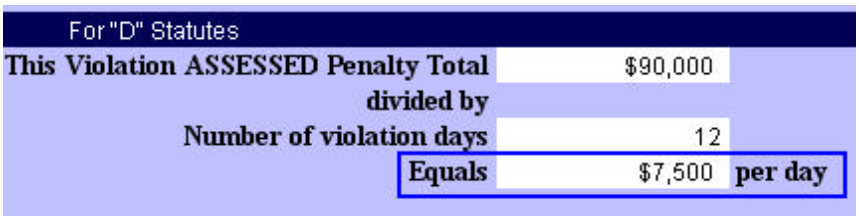
1. First, rule out simple mistakes and save unnecessary work by rechecking the adjustment factors, data input accuracy and other assumptions that affect the penalty amount.

2. Construct and complete a table similar to the one in Appendix A. Or if you prefer, a spreadsheet that

does most of the calculations is included in the PCW (the page is named *Stat Limit Adj*). Instructions for its use are in Appendix B.

3. Determine the date(s) on which *each* violation occurred. If a violation occurred on more than one date, find the per day assessed penalty amount for that violation. The PCW provides this amount (see *Figure 9*)

Figure 11
Assessed penalty amount per day



4. Add the assessed per day penalty amounts for all violations in the enforcement action, and then....

For days which are at or *below* the statutory limit...	do not adjust the amount for that day.
For days which are *above* the statutory limit...	adjust the amount for that day downward, such that it is equal to the statutory limit.

Add the penalty amounts for each day. This will be the revised total assessed penalty amount. Enter this number on the PCW, on the Front Page, in the block labeled "Assessed total amount, adjusted for statutory limit (leave blank if N/A)." Deferrals, SEPs, etc. (if any) will be subtracted from it to derive

the payable amount.

Finishing Up the PCW

If...	Then...
The PCW gives only “Does not exceed...” messages...	finish the PCW by entering in the deferral and/or SEP amounts on the Front Page.
The PCW gives one or more “Greater than statutory limit” messages...	evaluate and make adjustments as described above, and then finish the PCW by entering in the deferral and/or SEP amounts.

Appendix A: Example Format for Verifying Statutory Limit Compliance

		Dates of Violation					
No.	**Violation**	**11/14/95**	**07/30/96**	**12/10/96**	**[*date*]**	**[*date*]**	
1	330.113(b)(3)	$840					
2	330.251	$9,200					
3	330.254(a)		$8,400	$8,400			
							Grand Total
Raw Penalty Total		$10,040	$8,400	$8,400			$26,840
Adjusted Penalty Total		**$10,000**	$8,400	$8,400			**$26,800**

Notice how the “raw” penalty total on 11/14/95 exceeded the limit, and how it is adjusted downward to arrive at the adjusted penalty.

Appendix B: Instructions for Using the Statutory Limit Worksheet Page of the PCW

When to Use It

When the PCW indicates a possible statutory limit exceedance, you must verify with more detailed calculations. You can use a manual fill-in form as shown in Appendix A, or you can use the equivalent worksheet in the PCW. Both have the same overall function, but the PCW's version will also do most of the arithmetic.

How to Use it

5. 1. Go to the PCW page labeled *Stat Limit Adj*.
6. 2. Enter the Violation Number of the first violation (the same number as on the PCW violation page). This has no effect on the calculation; it is only to identify the violation.
7. 3. In the left column, enter the date(s) on which the violation occurred.
8. 4. Enter the corresponding per-day assessed penalty amount for each date. This amount is shown on the PCW violation page, near the bottom, in the blank labeled *Equals [amount] per day*
9. 5. Repeat for each violation, *making sure that any subsequent violations that occur on an existing violation date are entered on the same date (row).*

Calculated Amounts

The PCW calculates the following figures:

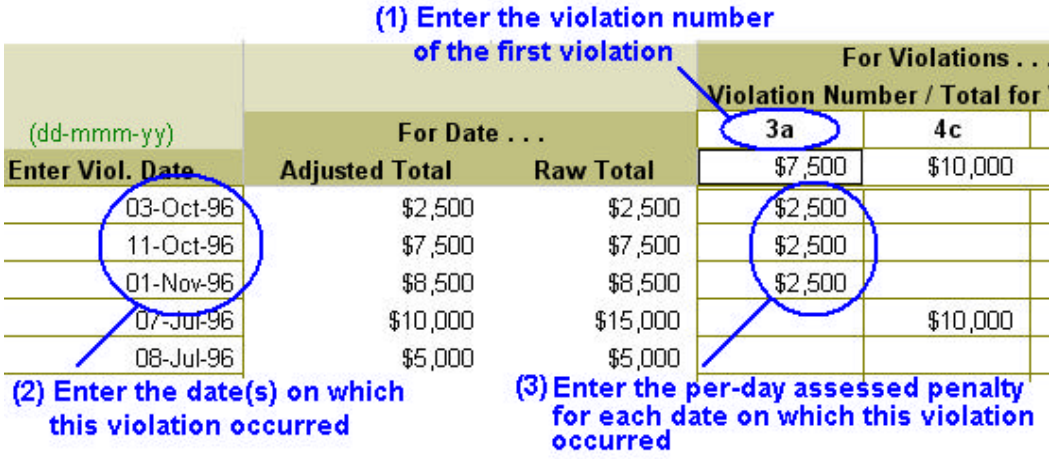
1. The per violation total (the amounts beneath the violation numbers; in *Figure 10*, $7,500 and $10,000). This is sum of the amounts in the column below the per violation total.
2. The per-day "Raw Total." This is the sum of the amounts in the row to the right of the Raw Total.
3. The per-day "Adjusted Total," which is the Raw Total reduced to the statutory limit (if the Raw Total exceeded the limit).
4. The Adjusted Total for the enforcement action (not shown in *Figure 10*).

What to Do With the Results

The "Adjusted Total" for the enforcement action should be entered on the Front Page, in the blank labeled *Assessed total amount, adjusted for statutory limit (leave blank if N/A)*. Enter the amount as a simple number, with no dollar sign, comma, decimal, etc. The PCW will then use this amount to calculate the payable penalty, after deducting the deferral and/or SEP credit.

Note: There is no need to go back to the violation pages and revise the per-day assessed penalty amounts. It is the daily totals that are being revised, not the violation per-day amounts. Revising the violation per-day amounts would require deciding which amount "caused" the exceedance, and then either reducing that amount or prorating the amount over the violation per-day amounts. For example, in the Appendix A table, which amount on 11/14/95 should be reduced, $9,200 or $840 (and by how much)? It would be an arbitrary decision.

Figure 12
Only three items need to be filled in for each violation.



PART VI

MERGING, SHELL DOCUMENTS, PENALTY CALCULATIONS AND OTHER INFORMATION FOR ENFORCEMENT